

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 591.

THE UNITED STATES, APPELLANT,

VS.

EARL B. COE.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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## UNITED STATES OF AMERICA.

*The President of the United States to Earl B. Coe, greeting :*

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at Washington on the 2nd day of October, 1893, pursuant to an appeal filed in the office of the clerk of the court of private land claims at Santa Fe, wherein the United States is appellant and you are the respondent, to show cause, if any there be, why the judgment rendered against the appellant, the United States, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable chief justice of the court of private land claims, this 21 day of August, in the year of our Lord one thousand eight hundred and ninety-three.

JOSEPH R. REED,  
*Chief Justice.*

DENVER, COLO., August 29, 1893.

Served by delivering to Earl B. Coe a true copy at Denver this 29 day of August, 1893.

A. H. JONES, *Marshal,*  
By A. W. BROWN, *Deputy.*

Marshal's fees :

One service .....	\$2.00
1 mile .....	.06
	<hr/>
	2.06

## UNITED STATES OF AMERICA.

In the court of private land claims, Santa Fe, New Mexico.

EARL B. COE, PLAINTIFF, RESPONDENT,

*vs.*

THE UNITED STATES, DEFENDANT, REPELLANT.

} No. 49.

*Appeal and allowance.*

The above-named defendant, the United States, considering itself aggrieved by the judgement entered against it on the 24th day of February, 1893, in the above-entitled proceeding, doth hereby appeal from said judgment to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said judgement was made, and duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,  
*U. S. Attorney, Court of Private Land Claims.*

And now, to wit: On the 21 day of August, 1893, it is ordered that the appeal be allowed as prayed for.

JOSEPH R. REED,  
*Chief Justice Court of Private Land Claims.*

c UNITED STATES OF AMERICA, ss:

In the court of private land claims, Santa Fe, June 20, 1893.

EARL B. COE, PLAINTIFF,  
vs.  
THE UNITED STATES, DEFENDANT. } No. 47.

*Stipulation.*

It is hereby stipulated and agreed between the plaintiff and the defendant that in making up the transcript in this case for the Supreme Court the clerk shall copy only the translations of the original Spanish documents in the same, and that all original Spanish documents and all original exhibits used by either the plaintiff or defendant in the trial of the cause are to be transmitted by him to the clerk of the Supreme Court of the United States for the use of either party and the court upon the hearing of this case therein.

A. M. STEVENSON.

S. L. CARPENTER,

*Attorney for Plaintiff.*

MATT. G. REYNOLDS,

*U. S. Attorney, for Defendant.*

d (Copy.)

AUGUST, 21, 1893.

*To the Hon. Clerk of the Supreme Court of the United States, Washington, D. C.:*

SIR: In obedience to a stipulation, a copy of which is attached hereto, in the case of Earl B. Coe vs. The United States, No. 47, which has been appealed to the Supreme Court by the defendant, the United States, I send to you, under separate cover, the following documents, all in the Spanish language, to wit:

Testimonio, or title papers (Exhibit B to plaintiff's petition), but introduced in evidence as petitioner's Exhibit A.

Certificate signed by Juan Encinas, alcalde—petitioner's Exhibit B.

Certificate signed by Jose Maria Mendoza—petitioner's Exhibit C.

Certificate of Jose Maria Mendoza—petitioner's Exhibit D.

Certificate signed by Jose Maria Mendoza and Florencie Trejo—petitioner's Exhibit E.

Certificate signed by Jose de Aguilar—petitioner's Exhibit F.

Review or list of titles in archives of Sonora—portion of, introduced as petitioner's Exhibit A 1.

e I also send you, under separate cover, the following photographic exhibits, as stated on pages 316 and 349 of the transcript made in this cause, to wit:

Photographic exhibits for petitioner, thirty of cabinet size, each being identified on the back and in the transcript alphabetically; that is to say, from A to Z, inclusive, and from A 1 to D 1, inclusive, also G 1; and two very large photographs identified as E 1 and F 1, and

Photographic exhibits for United States, the defendant, being twenty-three photographs on like number of pages of a book, endorsed "El Paso

de los Algodones Grant, photographic Exhibit 1 to 23, inclusive, on part of the United States."

Please sign and return the enclosed receipt and oblige,

Yours, very truly,

JAMES H. REEDER,

*Clerk Court of Private Land Claims.*

1 UNITED STATES OF AMERICA,  
*Territory of New Mexico, ss:*

Be it remembered that heretofore, to wit, on the second (2) day of February, A. D. 1892, the Algodones Land Company, by its attorneys, E. M. Sanford, esquire, and Coe & Carpenter, filed in the office of the clerk of the court of private land claims, in and for the State of Colorado, at the city of Denver, in said State, a petition, in which said Algodones Land Company is plaintiff and the United States of America is defendant; which said petition is in the words and figures following, to wit:

In the United States court of private land claims.

In the matter of the Algodones Land Company for the confirmation of its title.

*Petition.*

Your petitioner, the Algodones Land Company, respectfully shows and alleges that it is a corporation duly erected and organized under and by virtue of the laws of the Territory of Arizona.

Your petitioner further alleges that it owns, holds, and possesses that certain tract of land commonly known and designated as the Rancho El Paso de los Algodones, lying and being situate in the southwest corner of the Territory of Arizona and more particularly herein-  
2 after described.

Your petitioner further represents that it owns, holds, and possesses said land under and by virtue of a certain instrument of writing, now and hereinafter designated as a grant title, bearing date the 12th day of April, 1838, duly made and executed by and on behalf of the State of Sonora, in the Republic of Mexico, under and by virtue of article two (2) of the sovereign decree, number seventy (70) of the 4th of August, 1824, therein conceding to the State the revenues (rentals) which by said law are not reserved to the General Government, one of which is the vacant land in the respective districts pertaining to the same; and thereunder the honorable constituent congress of Sonora and Sinaloa passed a law, being a law numbered thirty (30), bearing date 20th of May, 1825; and whereunder there was subsequent legislation passing other decrees, considering the same matter, and being embodied in sections 3, 4, 5, 6, and 7 of chapter 90 of the organic law of the treasury, being law numbered twenty-six (26) of the second of July, 1834.

That under and by virtue of said laws and decrees such proceedings were thereunder regularly and lawfully had as that the government of the State of Sonora, by its officers duly authorized by the laws aforesaid, and of said State, duly and regularly and for a good and valuable con-

3 sideration, to wit, the sum of four hundred dollars (\$400, in the lawful money of the State, and for other good and valuable considerations in said grant title set forth and described, did on the 12th day of April, 1838, sell and convey to one Senor Don Fernando Rodriguez, the land hereinbefore mentioned, and more particularly herein-after described.

Your petitioner further represents that it brings here a map of the land contained within the exterior boundaries of said grant, and attaches the same hereto and makes said map Exhibit A, and the same is made a part of this petition.

Your petitioner further represents that the original grant title or instrument of writing by which said grant was conveyed by the said State of Sonora to Senor Don Fernando Rodrigues, is not in the possession or under the control of your petitioner, but the said instrument or grant title is now, together with other alleged records and papers in the possession and custody of Royal A. Johnson, as surveyor-general of the Territory of Arizona, at the city of Tucson, and therefore your petitioner represents that *that* the original documents conceding or according said grant, together with transcripts or copies thereof, cannot be herewith presented or delivered to the United States attorney of this court for his judicial use. That the plaintiff has in its possession and under its control a certain copy of said grant title, which is endorsed by said surveyor-general as a true copy of the paper on file in the office of the surveyor-general for the district of Arizona, and purporting to be a copy translated

4 into the English language of the said grant title, which copy so certified as aforesaid is hereto attached and made a part of this petition and marked Exhibit B. Your petitioner represents, however, that there are many inaccuracies and omissions inadvertently made in said copy and among other things there is an omission of a map of the exterior boundaries and locations of said grant, which map or plat is attached to and is a part of the original grant title. Your petitioner further represents and shows that it cannot at this time comply with the rules of the court in furnishing copies of said grant, for the reason that said grant papers are not in its possession, but in the possession of the surveyor-general aforesaid; that on the coming on of the said original grant title, to this court by the order of this court, or otherwise as may seem proper, your petitioner will furnish the necessary and requisite copies of said instrument in the Spanish and English languages, at such time and under such terms as may be required by order of the court, or otherwise as may be proper.

Your petitioner further shows that your petitioner, the corporation aforesaid, claims to own, hold, and possess said property, under and by virtue of divers and sundry conveyances made by the said Senor Don Fernando Rodrigues, and his guarantees to the Colorado Commercial and

5 Land Company, a corporation duly erected under the laws of the State of California, and by the said California corporation, through divers other conveyances to your petitioner, which several other conveyances are on file and of record in the office of the county recorder of the county of Yuma, in the Territory of Arizona; abstracts whereof your petitioner will furnish to this court at such time and upon terms as may be meet proper in the premises.

Your petitioner further alleges that he is informed and believes that there *us* no person or persons in possession of or claim said grant, or any part thereof, otherwise than by license or permission of your petitioner or its grantors or predecessors in interest, except so much as is occupied by the village of Yuma, in the county of Yuma, Territory of Arizona, as mentioned and described in a certain town-site patent heretofore executed and delivered by the President of the United States to the mayor of the incorporation of Yuma, for the use and benefit of the occupants thereof, and on file and of record in the office of the county recorder aforesaid; that as to so much of the said grant land and no more that is mentioned and described in said town-site patent, the grantor and predecessor in the interest of your petitioner has heretofore deeded and conveyed to the mayor of said municipal corporation of Yuma all the right, title, and interest said grantor or predecessor in interest then had; and your petitioners here and now disclaims any interest in so much of said

6 grant land as lies within the exterior boundaries of said town-site patent, saving and reserving, however, if it seems meet and proper to 'his court, the right to have that portion of said grant as lies within the exterior boundaries of the land described in said town-site patent, confirmed to inure to the benefit of the mayor of said village of Yuma and his successors in office, for the benefit of the occupants of said town site.

Your petitioner further represents that under and by virtue of section eight (8) of the act of Congress approved July 22nd, 1854, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donation to actual settlers therein, and for other purposes," and of acts amendatory or in extension thereof, or supplemental thereto; a grantor and predecessor in interest of your petitioner, to wit, the Colorado Commercial and Land Company, filed in the office of the surveyor-general of the district of Arizona, on the 22nd day of December, 1879, a petition, therein praying that the said grant title may be confirmed, and thereunder such proceedings were had as that *ex parte* testimony was taken on behalf of the Government, without the opportunity on the part of the then grant claimants to confront the witnesses or to examine or cross-examine any witness or any evidence produced on the part of the Government. That afterwards such proceedings were had by the said

7 surveyor-general on the 13th day of August, 1880, as that he recommended in substance and to the effect that the said grant claim and title be not confirmed, but that the same be rejected, and thereafter, as your petitioner is informed and believes, no further nor other proceedings were had or taken thereunder.

Your petitioner further represents and shows that the land described and intended to be described by and in said grant title, and conveyed as aforesaid by the State of Sonora to the said Don Fernando Rodrigues, and owned, held, and possessed by your petitioner as aforesaid, is as follows, to wit:

"Five (5) square leagues of land, contiguous to the Colorado River, situated in front of the confluence of the same with the Gila River, and opposite a point named El Paso de los Algodones, and known as the Rancho El Paso de los Algodones grant, and more particularly described, omitting the land described in the town-site patent aforesaid, as follows, to wit:

Section' one (1), two (2), eleven (11), twelve (12), twenty-five (25), thirty-six (36), three (3), ten (10), fourteen (14), thirteen (13), twenty-



four (24), twenty-three (23), twenty-six (26), thirty-five (35), thirty-four (34), in township number ten (10) south, range twenty-five (25) west of the Gila and Salt River base and meridian; also sections four (4), five (5), six (6), seven (7), eight (8), seventeen (17), eighteen (18), and nineteen (19), the northwest quarter ( $\frac{1}{4}$ ) of section three (3), the north half ( $\frac{1}{2}$ ) and southwest quarter ( $\frac{1}{4}$ ) of section nine (9), the west one-half ( $\frac{1}{2}$ ) of section twenty (20), the north one-half ( $\frac{1}{2}$ ) and southwest quarter ( $\frac{1}{4}$ ) of section thirty (30), and northwest one-quarter ( $\frac{1}{4}$ ) of section thirty-one (31), in township ten (10) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also sections one (1), two (2), three (3), four (4), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), and northwest one-quarter ( $\frac{1}{4}$ ) of section twenty-four (24), and the north one-half ( $\frac{1}{2}$ ) and the southwest one-quarter ( $\frac{1}{4}$ ) of section twenty-six (26), and section five (5), in township nine (9) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also section six (6), and the northwest quarter of section five (5), and the north one-half ( $\frac{1}{2}$ ) and the southwest one-quarter ( $\frac{1}{4}$ ) of section seven (7), in township nine (9) south, range twenty-three (23) west of the Gila and Salt River base and meridian. Section' nineteen (19), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32), and the south half ( $\frac{1}{2}$ ) of sections twenty (20) and twenty-one (21), and of the northwest quarter ( $\frac{1}{4}$ ) and southwest quarter ( $\frac{1}{4}$ ) of twenty-eight (28) in township (8) south, range twenty-three (23) west, Gila and Salt River base meridian; also section' twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), thirty-six (36), thirteen (13), fourteen (14), twenty-two (22), twenty-eight (28), and thirty-three (33) in township eight (8) south, range twenty-four (24) west, Gila and Salt River base and meridian; also that certain tract of land lying north of the San Bernardino base and meridian, and west of the village of Yuma, and within the said county of Yuma.

Also commencing at the southeast corner of section thirty-one (31), township ten (10) south, range twenty-four (24) west; thence ranging south to the international boundary line; thence west along said boundary line to the Colorado River; thence up the main channel of said river to a point west of said southeast corner of said section thirty-one (31); thence east along a westerly prolongation of the south line of said section to the southeast corner of said section and place of beginning.

And intended to cover and describe all tracts of land not hereinbefore specifically mentioned as lying along and upon the left bank of the Colorado River between the boundary line of the United States and the Republic of Mexico, and the confluence of the Gila and Colorado rivers, and conveyed by said grant title containing five (5) square leagues of land.

Wherefore your petitioner prays for an interlocutory order directing and commanding Royal A. Johnson, as surveyor-general of the district of Arizona, and his successors in office, to safely transmit the said original title, together with all records and papers in his possession as such officer relating to the Rancho El Paso de los Algodones

grant, to this court with all convenient speed; and that a hearing of this cause may be had, and that the validity of the title of your petitioner to said grant may be inquired into and decided; together with such other and further action of relief of this court as to the court may seem meet and proper in the premises.

E. M. SANFORD,  
COE & CARPENTER,

*Attorneys for Petitioner, 615 E. & C. B'ld'g, Denver."*

(Which said petition bears the following endorsements, to wit: "In the U. S. court private land claims, State of Colorado. In Re. Algodones Land Co. for confirmation of grant. Petition. Filed Feb'y 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18, '92, at Santa Fe. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. E. M. Sanford, Coe & Carpenter, att'ys, 615 E. & C. Block, Denver.")

11 Attached to and made a part of said petition is a map of the land as claimed, which said map is attached hereto and made a part of this transcript.

(Map—Exhibit A.)

12 Attached to and made a part of said petition is Exhibit "B," which is a translation of said grant title, and is in the words and figures following, to wit:

#### EXHIBIT B.

Translation of title of grant of five square leagues of land, more or less, known as the Rancho El Paso de los Algodones, situated at the confluence of the rivers Gila and Colorado, in Arizona Territory; granted to Senor Don Fernando Rodriguez, April 12th, 1838; now owned by the Colorado Commercial and Land Company. San Francisco, Frank Eastman & Co., printers, 509 Clay street, 1879.

13 Title of grant of five square leagues of land situated contiguous to the rivers Gila and Colorado, in front of the junction of the same; also the place (punto) named "El Paso de los Algodones," of the said river Colorado, on the frontier of the north of this State of Senora, issued by the said office of the general treasury, in favor of the Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, Free State of Sonora.

Second-class seal, twelve reales (\$1.50) for the years one thousand eight hundred and thirty-seven, and thousand eight hundred and thirty-eight.

Jose Justo Milla, proprietary auditor of the general treasury of the free, independent and sovereign State of Sonora, encharged with the said office by the laws:

Whereas Article II of the sovereign general decree, No. 70, of the fourth of August, 1824, conceded to the States the revenues (rentas) which by said law are not reserved to the general government, one of which is

the vacant land in the respective districts pertaining to the same, in consequence of which the honorable constituent congress of Sonora and Sinatoa passed the law, No. 30, of the twentieth of May, 1825, and also subsequent legislations passed other decrees concerning the same matter, which dispositions have been embodied in sections three, 4, 5, 6, and 7 of chapter 90 of the organic law of the treasury, No. 26, of the 11 of July, 1834.

14 And Don Fernando Rodriguez, a resident of Hermosillo, having made formal application to this general treasury department for the registry of certain vacant and desert lands contiguous to the Gila and Colorado rivers, in the northern part of the State, the corresponding espediente was made out, in strict accordance with the laws, which is as follows:

*Senor Treasurer-General of the State:*

I, Fernando Rodriguez, a resident of Hermosillo, before your honor, in due form of law, represent: That having sufficient means to settle and cultivate a tract of vacant land, which is entirely desert, on the northern frontier of the State, situated between the Colorado and Gila rivers, said lands including the tract from the southern side of the Gila River, in front of the junction of the same with the Colorado River, as far as the crossing (Paso) of the Algodones, and from said point following the eastern margin of the Colorado River as far as the junction of the same with the Gila, a distance of about five leagues.

Wherefore, in the name of the sovereign authority of the State, I make a formal registry of said vacant lands, which your honor will be pleased to admit, and to appoint a person worthy of confidence, for the purpose of making the corresponding measurements and valuation of said lands, and to make the necessary publications as required by law; I, offering at the proper time, to furnish satisfactory evidence as to my capabilities,

15 and to pay the just taxes (derechos) into the public treasury; it being understood, Senor Treasurer, that the registry that I now make is under the condition that the settlement and occupation of the said vacant lands by me shall be when the notorious condition and circumstances of the region of country in which said vacant lands are situated may permit the same to be done, since the said vacant lands are situated in a country desert and uninhabitable, on account of the hostility of savages; it being well known that a settlement made by the Spanish Government in the desert country of the Colorado was entirely destroyed in a short time by the Yuma Indians and other savages.

Wherefore I pray your honor to be pleased to decree as I have asked, swearing that I ask this in good faith and to whatever is necessary.

FERNANDO RODRIGUEZ.

HERMOSILLO, *January 4th, 1838.*

ARIZPE, *January 12th, 1838.*

The foregoing petition being presented and admitted, and since the petitioner offers to present the necessary evidence of his capabilities, and besides, since it is well known that the petitioner (registrador), Don Fernando Rodriguez, is a man of abundant means, and ample commission is conferred on Don Macericio Carillo, a resident of the capital, to the end that without

prejudice to a third party who may have a better right (which includes those  
 16 who may have heretofore have registered or denounced the same  
 land, with the same, or under a different name, situation, and  
 boundaries), and with previous citations to the interested party and  
 coindantes, if there should be any, that they appear in person, or by their  
 agents, to designate and defend their boundaries, and that the said com-  
 missioner shall proceed to the measurement, valuation, and offer of sale of  
 the said vacant lands referred to in the foregoing registry; said commis-  
 sioner proceeding in the matter in entire conformity with the provisions of  
 sections 3, 4, 5, 6, and 7 of chapter 90 of law No. 26, of the 11th of  
 July, 1834, and also with the regulations for the measurements of lands  
 for the raising of cattle and horses, which regulations were formed in ful-  
 fillment of the requirements of law No. 30, of the 20th of July, 1825,  
 adjusting the citio or sitios that may result in accordance with the constant  
 practice of multiplying the number of varas contained in the diameter from  
 north to south, by the number contained in that from east to west, so as  
 to give to each sitio the area corresponding to the sum of twenty-five  
 millions of square varas, as required by the existing laws in relation to  
 the matter.

And when these proceedings shall have been concluded the same shall be  
 transmitted, in the original, to this office (Tesoreria), annexing thereto the  
 corresponding topographical map of the land; notifying the interested  
 party and others who may be interested as bidders, that personally or by  
 17 their agents they may be present at the public sale of said lands  
 which are to be made in "Junta de Almonedas" in favor of the  
 person who may be the highest bidder. Jose Justo Milla, pro-  
 prietary auditor of the general treasury of the State, and encharged with  
 the same by the laws thus provided, ordered, and signed, with the assisting  
 witnesses, in the absence of a notary public, there being none according  
 to law.

JOSE JUSTO MILLA.

Assistant: ALEJO CARRILLO.

Assistant: LEWIS CARREMEO.

ARISPE, *January 12th*, 1838.

The foregoing order of the Senor Treasurer-General having been  
 received, by which he was pleased to commissioner me to make the meas-  
 urement, valuation, and the offer of sale of the vacant lands referred to in  
 the registry of Don Fernando Rodriguez, with which this expediente com-  
 mences, and in obedience to the same, I shall proceed to said operations,  
 after the appointment, acceptance, and oaths of the official measurers,  
 counter, and marker, for which purpose I appoint for the first Don Juan  
 Rios Candelario and Jose Maria Sais; for the second, Don Julian Padillo,  
 and for the third, Don Alonzo Maria Freearra. Thus I, Mauricio Car-  
 rillo, acting commissioner, provided and signed with the assisting witnesses,  
 in the ordinary form.

MAURICIO CARILLO.

Assistant: SANTOS VIGARRIA.

Assidtant: JESUS TRASQUILLO.

Whereupon the officers appointed in the foregoing act, being present,  
 they were notified of their appointment, which they accepted and made the

18 necessary oath that they would faithfully discharge their duty. Whereupon I make this entry in the proceedings and sign the same with those who know how to write, with the officials and the ordinary assisting witnesses to which I attest.

MAURICIO CARRILLO,  
JULIAN PADILLO,  
ALONZO MARIA FREEIERRA.

Assistant: SANTOS VIGARRIA.  
Assistant: JESUS TRASQUILLA.

On the vacant lands named "El Paso de los Algodones," on the third day of the month of February, 1838, for the purpose of proceeding with all possible dispatch, on account of the great danger from the savages, with the measurement of this land, I caused the officials to measure, in my presence and that of the interested party and the assisting witnesses, a cord of ystel of 50 varas in length, which was done, the said cord having a stake attached to each end thereof of a convenient length. In view of the fact that there are no colondantes of this land, the same being in a desert region, I proceeded at once to make the corresponding measurements of the land in the following manner: Being at a point on the southern side of the river Gila, in front of the confluence of said river with the Colorado, I caused a large stone to be placed as a monument for a commencing point, and setting at this point a compass well regulated and taking a course to the southwest so as to terminate almost at the crossing of the Colorado River, named los Algodones, the line was run, measuring and counting three hundred cords, three leagues, a little more or less, allowing for the irregularities from making the measurements on horseback, the line terminating at the said paso (crossing) of the river Colorado, named los Algodones, at which point I ordered to be placed a stone monument (una abuttado mole de piedras).

From this point the measurements were continued along the eastern margin of the said Colorado River, running up the same (courses north-west, north, and northeast, to the point of commencement), to wit, to the first stone monument which was placed in front of the confluence of the river Gila with the Colorado. The registrador, Don Fernando Rodriguez, having asked this, and in consideration of the great danger in which he, myself, the officials, the assisting witnesses, and the escort that accompanied us of perishing at the hands of the savages, there was measured in all five square leagues, more or less, in the manner as shown by the topographical plan which accompanies these proceedings, with which the Senor Rodriguez, the interested party, was well content, who, in testimony of his being satisfied with the same, signed with me, the officials who knew how to write, and the assisting witnesses, in the ordinary form to which I attest.

MAURICIO CARRILLO.  
JULIAN PADILLO.  
FERNANDO RODRIGUEZ.  
ALONZO FREEIERRA.

Assistant: SANTOS VIGARRIA.  
Assistant: JESUS TRASQUILLO.

On the same land of the confluence of the Gila River with the Colorado, and of the Paso de los Algodones, on the fourth day of the month of February, 1838, the measurements having been concluded as set forth in the

20 foregoing proceedings, and with the approbation of the interested party, the officials and witnesses, I determined that in view of the impossibility of taking further proceedings in the matter in this dangerous desert country, and also since the officials who made the measurements have the necessary knowledge in relation to the class of these lands and the character of its permanent streams, we should proceed to the other tract of vacant land, named "La Punta del Sargento," contiguous to the Gulf of California, for the purpose of making the measurement of the same, for which purpose I am also commissioned, and which said operations shall be concluded, we shall return to the city of Arispe for the purpose of concluding the respective expedientes.

In witness whereof I sign in the ordinary form to which I attest.

MAURICIO CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

In the city of Arispe, on the 18th of the month of March, 1838, for the purpose of proceeding to the justification of the aforesaid land, I appointed for the valuation of the same Don Alonzo Maria Treciera and Juan Rios Candelario, who, after accepting the same, and made oath in due form of law, I having at the same time explained to them articles 64 and 65 of the organic law of the treasury, No. 26, of the 11th of July, 1834, they said unanimously that *that* the just value of the five square leagues referred to in these proceedings can not be less than four hundred  
21 dollars, being at the rate of eighty dollars per square league, since the same is susceptible of irrigation by the waters of the Gila River, and because the lands are suitable for cultivation, if not in the whole, still in the greater part. And having agreed as to this just price of four hundred dollars, the same being in accordance with the law on the subject, I manifested the same to the interested party, Señor Don Fernando Rodriguez, who was satisfied, saying, however, that he would desire to ask some equitable grace in this particular, in view of the fact that, one account of the danger from the savages, it will be very difficult for some years to realize the settlement and cultivation of the said lands for the just and notorious reasons set forth in his petition of registry, signing with me, the appraisers who knew how to write, and the ordinary assisting witnesses, to which I certify.

MAURICIO CARRILLO.

FERNANDO RODRIGUEZ

(for himself and for my companion).

JUAN RIOS CANDELARIO,

(who does not know how to sign).

ALONZO MARIA TRECIERRA.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

In the city of Arispe, on the said day, month, and year, the proceedings of measurement and valuation of the vacant lands referred to being concluded, I ordered that the thirty public offers of sale (pregones) be proceeded with, soliciting bidders; promulgating the same by means  
22 of an official communication to the señor judge of 1st instance of Guadalupe del Altar, to the end that he may give notice of the said public sale in the pueblos of the district.



Thus I, Mauricio Carrillo, commissioner surveyor, and ordered signing the same, with the ordinary assisting witnesses, to which I attest.

MAURICIO CARRILLO.

Assistant: SANTOS VIGARIA.

Assistant: JESUS TRASQUILLO.

Razon: At the same date an official communication was sent to the the senor judge of 1st instance of Guadalupe del Altar for the purpose set forth in the foregoing proceedings, in witness whereof I sign with my rubrica.

[RUBRICA.]

1st pregon (offer of sale). In Arispe on the ninth day of March, 1838, the first public offer at sale was made in the following legally established terms, it being announced to the public by the sound of a bell and by the autioneer (pregonero), Florencia Baldisano, in a clear and loud voice, that "there will be sold on account of the public treasury five square leagues of vacant lands, surveyed for the registrar of the same, Don Fernando Rodriguez, a resident of Hermosillo, situated contiguous to the rivers Gila and Colorado, in the northern part of this State, which lands are valued at the sum of four hundred dollars, that is, at the rate of eighty 23 dollars per square league; the same being susceptible of irrigation by permanent water, and being suitable for cultivation, if not in the whole, in the greater part; whoever may wish to bid for the same let him to so before the commissioner of surveys."

And no bidder appearing, this entry was made in the proceedings, which I sign, with the assisting witnesses, in the ordinary form, to which I attest.

MAURICIO CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

2nd. On the tenth of the same month another public offer at sale was made in the same terms as the foregoing, and there was no bidder.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

3rd. On the eleventh the third offer was made, and no bidder appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

4th. On the twelfth of March the fourth offer was made, and no bidder appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

5th. On the thirteenth of said month there was made to the public the fifth offer of sale; whereupon no bidder appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.



24      6th. On the fourteenth of the same month the sixth offer was made, without bidders.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

7th. On the fifteenth of the said mont' the seventh publication was made, and no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

8th. On the sixteenth of the same month another offer of sale was made, without bidders.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

9th. On the seventeenth the ninth publication was made, without bidders.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

10th. On the eighteenth another public offer was made, and no purchaser appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

11th. On the nineteenth of the same month the eleventh public offer at sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS TRASQUILLO.

Assistant: JESUS TRASQUILLO.

25      12th. On the twentieth an offer was made similar to the first, but no purchaser appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

13th. On the twenty-first of the present month a similar offer was made, but no bidder appeared.

CARRILLO.

Assistant: SANTOS TRASQUILLO.

Assistant: JESUS TRASQUILLO.

14th. On the twenty-second of March another offer was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

15th. On the twenty-third of the same month another offer was made, without any bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

16th. On the twenty-fourth another offer was made, without bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

17th. On the twenty-fifth of the same month another offer was made, but there were no bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

26 18th. On the twenty-sixth another offer at public auction was made, but without bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

19th. On the twenty-seventh of March another offer was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

20th. On the twenty-eighth another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

21st. On the twenty-ninth of the same month another public offer of sale was made, but without bidders.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

22nd. On the 30th of the present month the twenty-second offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

23rd. On the thirty-first of the present month of March another offer of same was made, but no bidders appeared.

CARRILLO.

Assistant : SANTOS VIGARRIA.

Assistant : JESUS TRASQUILLO.

27        24th. On the first of April another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

25th. On the second of the same month another offer was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

26th. On the third of the same month another offer was *m* made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

27th. On the 4th of the same month another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

28th. On the fifth of the same month another offer of sale was made, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

29th. On the sixth day of the same month another offer of sale was made at public auction, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

28        30th. In the city of Arispe, on the 7th day of April, 1838, the last offer of sale was made in all respects similar to the first, but no bidders appeared.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

ARISPE, April 7th, 1838.

This expediente having been concluded and no purchaser appearing at the thirty offers of sale of said lands, let the expediente be transmitted to the treasurer-general of the State, that the final proceedings may be taken in relation thereto.

In witness whereof I sign with the assisting witnesses in the ordinary form.

CARRILLO.

Assistant: SANTOS VIGARRIA.

Assistant: JESUS TRASQUILLO.

Razon : On the same day this expediente was by me delivered to the senior treasurer-general of the State. In witness whereof I sign with my rubrica.

Arispa, April 7th, 1838.

To the promotor-fiscal of the public treasury.

Milla,

*Señor Treasurer-General of the State :*

The undersigned, promotor-fiscal of the treasury, has carefully examined the expediente made out by the commissioner appointed by your honor, Don Mauricio Carrillo, in relation to the measurement valuation, and the public offers of sale of the vacant land registered by the Señor Don Fernando Rodriguezm, a resident of Hermosillo, which land is situated contiguous to the Gila and Colorado rivers, the measurement  
29 of which commenced in frount of the confluence of said rivers, and running from that point in a straight line to the southwest almost as far as the paso (crossing) of Los Algodones, from which point the measurement was continued all along the eastern margin of the said river Colorado, in the direction of the north, northwest, and northeast to the point where the measurements were commenced in front of the confluence of said rivers, without having summoned the colindantes, because there was none, the surveyor not having been able to make the measurement in any other manner on account of the great danger from hostile Indians, for which reason he returned at once to the city ; but all was done to the entire satisfaction of Señor Rodriguez, the erea of the land measured having been estimated at five square leagues, a little more or less, the said commissioner and officials having made the necessary observation as to the character of said vacant lands ; and after the surveyor Carrillo had made a survey of another place named Punto del Sargento, he returned here and took the necessary proceedings of valuation and offer of sale at public auction ; from which it appears that the said five square leagues were justly and legally valued at the sum of four hundred dollars—that is, at the rate of eighty dollars per square league—and that *and that* at the thirty public offers of sale no purchaser appeared. Neither does it appear that any interested party appeared from the district of Guadalupe del Alter, to which juzgado of first instance the Commissioner  
30 Don Mauricio Carrillo gave at the proper time the necessary official notice of the proceedings in relation to the sale of said vacant land.

No one can be ignorant of the fact that the registry and the survey of said land will result in a great benefit to the public treasury, and that it will promote the settlement of Sonora, and also that it is an enterprise of the Señor Don Fernando Rodriguez, which is laudable and worthy of all protection, for the notorious causes and reasons set forth by said Rodriguez in his petition for registry ; and it is also well known that these causes were the foundation of all the grants made by the Spanish Government in the desert lands of Sonora.

Wherefore, in view of these facts, it is most just that the Senor Don Fernando Rodriguez be admitted to a composition with the treasury of this sovereign State for the said vacant lands, and under the condition of settling the same when circumstances may permit the same to be done.

Wherefore the promoter fiscal asks that your honor be pleased to order that the three public offers of sale (publicos almonedes) be made, and the sale as required of said five square of land, more or less, and that when the purchase money of said land shall be paid into the treasury by the person who shall purchase the same at public auction that a title be issued to him for said lands for his security.

This is the report of the undersigned fiscal; however, your honor will determine what is proper in the premises.

JOSE CARRILLO.

ARIZPE, April 8th, 1838.

31

ARIZPE, April 8th, 1838.

In accordance with the opinion of the senior promoter fiscal of the treasury, let three public offers of sale be made of said land in the manner established by law, with notice to the interested party, Don Fernando Rodriguez.

JOSE JUSTO MILLA.

Assistant: ALEJO CARRILLO.

Assistant: LOUIS CARRANCO.

First almoneda (public auction):

In the city Arizpe, on the eighth day of April, 1838, the senores composing the junta de almonedas (board of sale) having met, these gentlemen being the senior treasurer of the State by the ministry of law; the comptroller, Don Jose Justo Milla; the judge of the first instance of this district, Don Francisco Mendosa, and the administrator of revenues of this city, Don Jose Carrillo, for the purpose of celebrating the first almoneda, referred to in this expediente, whereupon, at the sound of the bell, many individuals assembled at the office of the treasurer-general, when the auctioneer, Florencio Baldizan, said in a loud and clear voice: "There will be sold on account of the public treasury of the State, five square leagues of vacant lands, a little more or less, surveyed in favor of the register of the same, Don Fernando Rodriguez, a resident of Hermosillo, said lands being situated contiguous to the Gila and Colorado Rivers, in front of the confluence of the same, and the point of the Pass of

32 Los Algodones, on the northern frontier of this state, valued at the sum of four hundred dollars, that is, at the rate of eighty dollars per square leagues, for the reason that said land has permanent water and is suitable for cultivation. Whatever may wish to bid for said five square leagues of land let him do so before the board and he will be admitted, with the understanding that on the day after to-morrow they shall be positively knocked off to whoever may be the highest bidder for the same."

In these terms this act was concluded, and no bidder coming forward the proceedings were closed.

In witness of which the same was signed by the senior president and members of the board.

MILLA.

MENDOZA.

CARRILLO.

Second almoneda: In the same city, on the 9th of the same month and year, at the meeting of the board of sale (junta de almonedas), the second publication was made yesterday inviting bidders, with the only difference that to-morrow the sale will be made.

MILLA.  
MENDOZA.  
CARRILLO.

3rd almoneda y remate: In this city of Aripze, on the tenth day of the month of April, 1838, at a meeting of the commissioners composing the board of sale (junta de almonedas), composed of the treasurer-general of the State; the comptroller, Don Jose Justo Milla; the judge of the 1st instance of the district, Don Francisco Mendoza; and the administrator

of revenues the promoter fiscal of the treasury, Don Jose Carrillo, for the purpose of proceeding to the celebration of the sale at public auction of the vacant lands referred to in this expediente. At the sound of the bell many individuals assembled at the office of the treasurer-general, and in the presence of the multitude the auctioneer, Florencio Baldizan, said, in a loud and clear voice, that "There will be sold at public auction, on account of the public treasury, five square leagues of vacant lands, surveyed in favor of the register, Don Fernando Rodriguez, a resident of Hermosillo, said tract of land being situated contiguous to the Gila and Colorado rivers, in front of the confluence of the same, and of the point of the Paso de Los Algodones, on the frontier of the north of this State, the said lands being valued at four hundred dollars, that it, at the rate of eighty dollars per square league, for the reason that the said land has permanent water, and that the same is suitable for cultivation. Whoever may desire to bid for said lands let him do before this board, and he shall be admitted."

And this offer having been made at twelve o'clock of this day, and no bidders appearing, and said Senor Don Fernando Rodriguez having repeated his offer before the board of sale (junta de almonedas) of the just price of four hundred dollars, th' auctioneer said for the last time: Once, twice, three. There will be sold to Don Fernando Rodriguez, a resident of Hermosillo, the five square leagues of arable lands, situated on the Gila and Colorado rivers, for the sum of four hundred dollars."

34 Whereupon these proceedings of sale were concluded in favor of Don Fernando Rodriguez.

In witness whereof the president and members of the board signed with the interested party.

MILLA.  
MENDOZA.  
CARRILLO.  
FERNANDO RODRIGUEZ.

ARISPE, April 10th, 1838.

Don Fernando Rodriguez, having been notified to pay in to the office of the treasury the four hundred dollars as the just price of the land referred to in this expediente, the six dollars for the last auction, and the

thirty dollars for the title to be issued to him, whereupon he said that at once he would make said payment, and in witness of which he signed with me and the assisting witnesses.

MILLA.

FERNANDO RODRIGUEZ.

Assistant: BARTOLO MIRANDA.

Assistant: ALEJO CARRILLO.

Jose Justo Milla, proprietary auditor of the general treasury of the State of Sonora, in charge of the same under the law, certifies that on folio 18 of the "Libro Manuel de Cargo y Data" of the present year is found the following entry: April 10th, charged on account of grants of lands, four hundred dollars, paid by Don Ferfardo Rodriguez, a resident of Hermosillo, as the sum which has been sold by the junto de almonedas of this treasurer's office on this day, five square leagues of vacant lands, at the rate of eighty dollars per square league, since the same

35 contains permanent water and is suitable for cultivation, the said land being situated contiguous to the Gila and Colorado rivers, in front of the confluence of the same, and also the point named El Paso de los Algodones, of the said river Colorado, on the northern frontier of this State, and of this payment the corresponding receipt was given to the interested party for his security. Milla. Fernando Rodriguez, \$400.00.

In witness whereof I give this in Arispe, on the tenth of April, 1838.

JOSE JUSTO MILLA.

Jose Justo Milla, pr'ietory auditor of the general treasury of the State of Sonora, in charge of the same by law, certifies that on folio 19 of the corresponding book of the present year there is found the following entry: April tenth, there is charged for the last offer of sale (almoneda) six dollars, paid by Don Feraando Rodriguez, a resident of Hermosillo, as the expenses or taxes of the last "almoneda or remate," made in his favor on this day, of the five square leagues of vacant lands situated on and contiguous to the Gila and Colorado rivers, in front of the confluence of the same, as also the point named "El Paso de los Algodones" of the said river Colorado, on the northern frontier of this State; and of this payment I give the interested party the corresponding certificate for his security. Milla.

FERNANDO RODRIGUEZ.

36 In witness whereof I give this in Arispe, on the tenth of April, 1838.

JOSE JUSTO MILLA.

In these terms was concluded the espediente in relation to the vacant lands situated contiguous to and in front of the confluence of the Gila and Colorado rivers, as also in front of the Paso de los Algodones of the said Colorado River on the northern frontier of this State, in favor of the registrar, Don Fernando Rodriguez, a resident of the city of Hermosillo, with all the formalities required by law and the supreme orders in relation thereto, the said original espediente remaining in the custody of the office of the treasury as a perpetual testimony. Wherefore, in the



exercise of the faculties conceded to me by the laws, decrees, and regulations and the superior existing orders in relation to lands, by these presents, and in the name of the free, independent, and sovereign State of Sonora, as well also of that of the august Mexican nation, I concede and confer upon, in due form of law, the Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, the five square leagues, a little more or less, which he registered, and which were sold to him at public auction by the *junto de almonedas* (board of sale) on the tenth of the present month for the sum of four hundred dollars, at which the same was valued, at the rate of eighty dollars per square league; which amount was paid into the treasury, as is shown by the respective expediente. Wherefore, I give

37 and adjudicate to the said Fernando Rodriguez, as a legal sale, for himself, his children, his heirs, and successors, the said five square leagues of vacant lands contiguous to the Gila and Colorado rivers, situated in front of the confluence of the same, as also opposite to the point named "El Paso de los Algodones" of the said Colorado River, on the northern frontier of this State, under the conditions which have been admitted as equitable and just by the interested party, the Senor Don Fernando Rodriguez, that is, that he shall settle and cultivate said lands so soon as the circumstances surrounding that distant and desert portion of the State may permit him to do so, in view of the eminent risk and danger there is on account of the savages; but when the said land shall once be settled and cultivated they shall be kept in this condition, and that they shall not be unoccupied and abandoned for any time; and if the same shall be abandoned for the space of three consecutive years, and any one else should denounce said lands, in that event, after the necessary proceedings, they shall be declared vacant and shall be adjudicated anew to the highest bidder; excepting as is just those years in which the abandonment shall be occasioned by the invasion of enemies, and this only for the time that this condition of things shall exist, requiring, as I do require, the interested party, Don Fernando Rodriguez, and his children, heirs, and successors, to the limits and coundaries which are expressly set out in the proceedings of the *measurement* as found in the expediente and in this title, observing and giving an exact fulfillment of what is

38 provided in article 63 of the organic law of the treasury, No. 26, of the 11th of July, 1834, in relation to the obligations of keeping on the boundaries of said land monuments of stone and lime. under the penalty of twenty-five dollars.

And under the authority conceded to me by the laws, and supreme orders in relation to the granting of lands, I order, command, and require all the senores, judges, justices, and local authorities, which at present exist or in future may be constituted, that in the discharge of their duty and in the carrying out of the requirements of our wise legislation, they shall not permit Don Fernando Rodriguez, nor his children, heirs, or successors to be in any manner disturbed or molested in the free use, ownership, dominion, and possession of the said five square leagues, more or less, but on the contrary they shall constantly watch and guard with the greatest vigilance and activity that he may be always protected in the quiet and peaceful possession that corresponds to him by legitimate right; so that he may freely enjoy, possess, sell, exchange, donate, transfer, leave as legacy, cede, and alienate said lands at his free will and election, as the absolute owner of the same.

In which terms the present title of ownership is issued in due form in favor of Don Fernando Rodriguez, his children, heirs, and successors, delivering the same to the said Rodriguez, for his security, first making a registry of the same in the corresponding book.

39 Given in the city of Arispe, the capital of the State of Sonora, on the 12th day of April, 1838. Authorized and signed by me, the propriatory contodor (auditor) of the general treasury of said State, and exercising the authority of the same under the law.

Sealed with the seal, which is legally used in this office, before the undersigned witnesses of assistants in the absence of a notary public, there being none, according to law.

[SEAL.]

JOSE JUSTO MILLA.

Assistant: BARTOLO MIRANDA.

Assistant: JOSE JESUS CORRUSA.

This title remains registered in the corresponding book. (Rubrica.)

Jose Justo Milla, propriatory contador of the general treasury of the State of Sonora, encharged with the same by the ministry of the law, certifies, that on folio 20 of the "Libro Manuel," of accounts of the present year, there is found the following entry: "April 12th. There is charged to the account of the grants of lands, thirty dollars paid by the Senor Don Fernando Rodriguez, a resident of Hermosillo, for the title which on this day was issued by this office of the general treasury, for five square leagues of vacaut lands, situated contiguous to the Gila and Colorado rivers, in front of the confluence of said rivers, also to the point named El Paso de Los Algodones, of the said river Colorado, on the northern frontier of this State, and of this entry a certificate is given to the interested party for his security. \$30.00."

40

MILLA.

FERNANDO RODRIGUEZ.

In witness whereof I give this, in Arispe, on the 12th day of April, 1838.

JOSE JUSTO MILLA.

*Supreme government of the free State. D. E. S. O. N. R. A.*

This supreme authority approves the title which your honor has issued on yesterday in favor of the Senor Don Fernando Rodriguez, a resident of Hermosillo, for five square leagues of land in front of the confluence of the rivers Gila and Colorado, and the Paso de los Algodones, on the northern frontier of this State. I say this to you in reply to your note of yesterday reiterating the consideration of my regard.

God and liberty.

Arispe, April 13th, 1838.

LEONARDO ESCALANTE.

To the treasurer-general of the State, Jose Maria Mendoza, provisional commissary-general of the State of Sonora, certifies that on this day he has directed, under a separate cover, and as a special matter, to his

excellency the minister of state by 'del despacho de hacienda of the Republic, and official communication of which the following is a copy :

*"General Commissary Department of the State of Sonora :*

"SIR: The Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, has presented to me the title which was issued in his favor by the general treasury of the ancient State, on the twelfth of 41 April, 1838, for five square leagues of vacant lands for cultivation, registered by the said Rodriguez, contiguous to the rivers Gila and Colorado, in front of the confluence of the same, and the point name' Paso de los Algodones, of the said river Colorado in the northern part of this State and which were for him surveyed, valued, and were sold by the Junto de Almonedas, and were adjudicated in the manner as shown by the (testimonio autorizado) certified copy, which I have the honor to transmit to your excellency to the end that the same may be presented to His Excellency the President of the Republic, for which purpose the said Senor Rodriguez has presented the said title to me of the land situated in front of the confluence of the Gila and Colorado rivers and the Paso de los Algodones of the Colorado.

"I have the honor to repeat to your excellency the consideration of my regard.

"God and liberty.

"JOSE MARIA MENDOZA.

"URES, June 6th, 1847.

"To his excellency the minister of state of del despacho de hacienda de la Republica Mexico.

"In witness whereof I give this at the request of the interested party Don Fernando Rodriguez, at Ures, the capital of the State of Sonora, on the sixth of June, 1847.

"JOSE MARIA MENDOZA."

The licenciado, Jose de Aguilar, governor of the State of Sonora, certifies in due for' of law that the present title which includes five 42 square league' of land contiguous to the rivers Gila and Colorado, in front of the confluence of the same, and also to the point named El Paso de los Algodones, of the said river Colorado, on the northern frontier of the State, measured and adjudicated in the year 1838, to Don Fernando Rodriguez, a resident and native of Hermosillo, was legally issued by the late Jose Justo Milla, contador of the general treasury of the State, and legally encharged with the said treasurer's office at the date referred to; and that in virtue of which he was competently authorized to form expedientes of lands, to measure and adjudicate the same and to issue titles therefor; and also that his signature, those of his assistants, and the seal stamped on said title are the same that they are accustomed to use in their official acts, and with which they have legalized all their official acts of like nature. Finally he certifies that the approval of the government, which is attached to the title and the certificate of Don Jose Maria Mendoza, are legal, and that their signatures are such as they have used in their official acts, and as such are entitled to all faith and credit, judicially or extrajudicially.

And at the request of the interested party I give this in Guaymas, on the eighth of June, 1847.

JOSE DE AGUILAR.

*Translation, Doc. No. 2.*

43 Jose Ma'ia Mendoza, superior chief of the treasury of the department of Sonora, certifies that from his excellency, the senior minister of state of del despacho de hacienda of the Republic, he has received a supreme order of which the following is a copy:

## MINISTERO DE HACIENDA.

SECTION 2ND. In view of the notes of your honor, numbers 7, 273, 403, and 414, dated February 23rd, 1839, May 26th, 17th of October, and 6th of November, last, in which you ask for instructions as to the manner of proceeding in relation to vacant lands in that department, his excellency the president has thought proper to resolve: that, until by legislative proceedings all doubts may be removed in relation to vacant lands, the initiative being previously taken by this ministry, you will direct that in matters relating to the lands referred to, they shall be determined in the junta de hacienda (board of the treasury), which shall be formed in a manner directed in a separate order of this date.

In answering your official communication No. 6, of the twenty-third of February, 1839, and in accordance, as well with article 74 of the decree of the seventeenth of April, as well as the law of the 7th of December of the same year, the proper junta (board) dictating the necessary measures in the matter, as far as their faculties may extend and when these matters shall reach the sphere contencioso, they shall be passed to the judge of the district for his determination.

44 You will bear in mind that in the said initiative that, with respect to vacant lands, this ministry proposes to make to the National Congress the point must be taken into consideration as to whether or not they are to remain assigned to the "Banco Nacional de Amortizacion," with the understanding that his excellency has directed that notwithstanding the order which I communicated to you on the twenty-third of January of the present year, and to the government of the department on the third of September last, in which it is declared that there shall only be delivered to the agent of the bank such property and public lands as may not be occupied by the Government or may be of interest to the service. You will suspend the delivery to the said agent of the lands that may not yet pass have been received until it shall have been determined whether or not they pertain to the bank; and if some have already been delivered, you will recover the same to the end that in all things these matters may be administered and dispatched in the manner as set forth. I say this to you by supreme order, and in reply to your inquiry for the corresponding ends, with the understanding that on this day I communicate the same to the government of the department, and to the junta directora (board of directors) of the said national bank, for their information and the necessary ends.

God and Liberty.

ECHVERRIA.

MEXICO, December 21st, 1840.

To the Superior Chief of the Treasury of Sonora.

I also certify that by virtue of the foregoing supreme order, the senior agent of the Banco Nacional de Amortizacion, in the department Lecen-

cedo, Don Manuel Maria Gaxiola, a resident of Alamo, returned  
 45 to me the expediente and other documents in relation to lands and  
 vacant lands, which had been transmitted to him by this gefatura,  
 in consequence of which he had continued administering and despatching  
 the said business of lands, on account of the public treasury under his  
 charge, in accordance with the laws, decrees, and regulations governing  
 these matters; also in the terms expressed in the supreme order of the  
 twenty-first of December last, before referred to. In witness whereof,  
 and for the security of the Señor Don Fernando Rodriguez, a resident of  
 Hermosillo, in relation to his lands, named Paso de los Algodones, del  
 rio Colorado, and in front of the confluence of this with the Gila, I give  
 this at his request, in Ures, on the thirtieth of May, 1841, on this common  
 paper, for want of the corresponding paper of the fourth seal, and with  
 the obligation on the part of the interested party to attach the required  
 stamped paper, as directed by law, in relation to revenues.

JOSE MARIA MENDOZA.

*Translation of Document No. 3.*

Jose Maria Mendoza, commissary-general of Sonora, and chief of the  
 section of liquidation of the extinguished departmental treasury, and  
 Florencio Trejo, second official of the general treasury of this State, occu-  
 pied in the same liquidation, certify, in due form of law, that in the said  
 office under our charge, there exists the original expediente of the lands  
 named El Paso de los Algodones, the proceedings of which were  
 46 taken in the year 1838, in consequence of the registry made by the  
 Señor Don Fernando Rodriguez, a resident of Hermosillo, the  
 measurement of which was made in accordance with the laws on the sub-  
 ject, and includes five square leagues of land situated on and contiguous  
 to the rivers Gila and Colorado, in front of the confluence of the same;  
 that the corresponding sale having been made by the treasury-general of  
 the State, the corresponding title was issued by him in favor of the said  
 interested party, Don Fernando Rodriguez, and we further certify that  
 said original expediente, having been found in that portion of the archives  
 pertaining to the treasury department existing in Arispe, it was transmit-  
 ted, with others, to our possession, after having formed the minute notice  
 in relation to lands which we sent to the supreme government of the State  
 on the 25th of December last. In witness whereof we give this at the  
 request of the interested party at Ures, on the 15th of January, 1858.

[SEAL.]

JOSE MARIA MENDOZA.

FLORENCIO TREJO.

Ygnaceo Pesquera, constitutional governor of the State of Sonora, cer-  
 tifies that the signatures of the officers who sign the foregoing certificate  
 are such as they are accustomed to use in public and private documents  
 signed by them. And for the necessary ends, I give this in the city of  
 Hermosillo, on the 10th of September, 1858.

Y. PESQUEIRA.

I. GUTIERREZ,

*Sec'y.*

47 I, R. C. Hopkins, being duly sworn, depose and say that the foregoing is a correct translation from the Spanish of the expediente and other documents of the sale and grant by the Mexican Government of Sonora of a tract of land containing five square leagues, situated near the junction of the Gila and Colorado rivers, and called El Paso de los Algodones. I further depose and say that I have seen in the archives of the treasurer's office of the State of Sonora, in the town of Ures, the capital of said State, the original expediente of said sale or grant, the foregoing being a translation of a "testimonio," or certified copy of said original, which in the month of February last I saw among and which at that time formed a part of the government archives of the State of Sonora. And I further say that there is or was, in the month of February last, in said archives of the treasury department of Sonora, a book of "Toma de Razon," or registry of grants of sales of lands made by the government of the State of Sonora; that these entries in this book appear to have been carefully made; that it extends over a period of a number of years, and covers the year 1838, and that in said book is found of the issuance, in the year 1838, of the grant of "El Paso de los Algodones" to Don Fernando Rodriguez. And I further say that I am acquainted with the signature of Jose Maria Mendoza, which occurs officially in the original, from which the foregoing translations were made, and also with the signature of Jose de Aguilar, which is also found in said original documents, and that I believe in said signatures, where they occur in said originals, to be the genuine signatures of the gentlemen referred to.

R. C. HOPKINS.

Subscribed and sworn to before me, a notary public in and for the city and county of San Francisco, State of California, this 6th day of December, A. D. 1873.

[SEAL.]

J. H. BLOOD,  
Notary Public.

Translation. Third seal. Two reals. For the year one thousand eight hundred and thirty-seven and eight hundred and thirty-eight. Estado Libre de Sonora.

Juan Jose Encinal, second alcalde of this city of Hermosillo, do certify as far as I can, ought, and the laws permit, and Senor Don Fernando Rodriguez, of this city, has the means and interests of his own quite enough and sufficient to stock and cultivate the five sitios of land which he registered on the fourth of January last, and which were adjudicated in his favor by the treasury-general of the State, comprising the tracts of land lying contiguous to the rivers Gila and Colorado in front of the confluence of the same, as well as to the Paso de los Algodones, on the said river Colorado, on the northern frontier of this State.

49 In witness whereof, I give him the present in duplicate at the request of the interested party, in Hermosillo, on the twenty-seventh March, 1838, authorized and signed by assistant witnesses, in default of a notary public, there being none authorized by law.

JUAN J. ENCINAS.

Assistant: JULIAN RODRIGUEZ.

Assistant: SANTIAGO SANCHEZ.



Arispe, April 4th, 1838. Let a copy hereof be annexed to the original proceedings and another to the grant.

JOSE JUAN MILLA.

Translated by John Clark. San Francisco, December 5th, 1879. Translation. L. S. Third seal year. 1856-1857. Four reales.

MEXICAN REPUBLIC, GOVERNMENT OF THE STATE OF SONORA.

The licentiate, Jose de Aguilar, governor of the State of Sonora, do hereby certify in due form of law that the present title, comprising five sitios of land contiguous to the rivers Gila and Colorado, opposite their confluence, as well as to the place named El Paso de los Algodones, on said river Colorado, on the northern frontier of this State, measured and adjudicated in the year 1838 in favor of Don Fernando Rodriguez, a resident  
50 and native of Hermosillo, was lawfully issued by the late Don Jose Pasto Milla, paymaster of the treasury-general of the State, and legally in charge of the said treasury at the time referred to, in virtue whereof he had competent authority to institute proceedings relative to lands, measure them, adjudicate, and give titles therefor, and that his signature and that of the assistant witnesses, and seal stamped on the said title, are the same that they use in their official acts, and with which they have legalized all their acts of the same nature. I finally certify that the approval of the Government annexed to the title and certificate of Don Jose Ma Mendoza are lawful, and the signatures are those they have used in the business in their charge, and as such they merit full faith and credit in judicial and extra-judicial matters.

And at the request of the interested party I give the present at this port of Guaymas, on the eighth day of the month of June, one thousand eight hundred and fifty-seven.

JOSE DE AGUILAR.

Translated by John Clark. San Francisco, December 5th, 1879.

TUCSON, ARIZONA, January 15, 1891.

A true copy of a paper (printed pamp'let) on file in the office of the surveyor-general for the district of Arizona.

[SEAL.]

ROYAL A. JOHNSON,  
U. S. Surveyor-General.

51 And be it further remembered, that on the same day, to wit the second (2) day of February, A. D. 1892, there was filed in the office of said clerk, in said city of Denver, State of Colorado, an affidavit, which said affidavit is in the words and figures following, to wit:

In the United States court of private land claims.

In re petition of Algodones Land Comapny for confirmation of grant.

STATE OF COLORADO,

County of Arapahoe ss:

*A'fidavit for order transmitting papers.*

E. M. Sanford, being by me first duly sworn, doth upon his oath depose and say: I reside at Prescott, in the Territory of Arizona, and have been



admitted to practice in the supreme court of the Territory of Arizona and of the United States. I am an attorney for the Algodones Land Company, the petitioner, a corporation erected and organized under and by virtue of the laws of the Territory of Arizona. That on the second day of February, 1892, the said Algodones Land Company filed in the office of the clerk of the United States court of private land claims at Denver, in said State, a petition to inquire into and decide the validity of a certain Mexican land grant, owned by said petitioner, lying and being situate in the Territory of Arizona, and known as the Rancho El Paso de los Algodones.

That the original grant title whereby the State of Sonora, Mexico, granted said lands to one Senor Don Fernando Rodriguez is not in the possession or under the control of your petitioner, but the same is, together with divers and sundry papers and records relating to said grant, in the custody and possession of honorable Royal A. Johnson, as surveyor-general of the district of Arizona as keeper thereof, at Tucson, Arizona.

That among said papers and records are certain documents, to wit, certain photograph copies of purported records of the Sonora government, which are essential and necessary for said petitioner to have, in the clerk's office of this court, that the said petitioner may properly arrange and prepare its case herein.

E. M. SANFORD.

Subscribed and sworn to before me this the second day of February, A. D. 1892.

[SEAL.]

JAMES H. REEDER,  
Clerk of the U. S. Court of Private Land Claims,  
By THOS. B. BALDWIN,  
Deputy.

And be it further remembered that on the same day, to wit, the second (2) day of February, A. D. 1892, an order was made by one of the justices of this court, which was attached to and under the same cover with the affidavit last before written, which said order is in the words and figures following, to wit:

"It appearing to me the undersigned, associate justice of the United States court of private land claims, that the petition of the Algodones Land Company has been filed in said court, to determine the validity and decide upon a certain Mexican land grant, situate in the Territory of Arizona, and known as the Rancho El Paso de Algodones, and that there is in the possession and custody of the honorable Royal A. Johnson, as surveyor-general of the district of Arizona, certain records and papers relating to said land grant, which ought to be safely transmitted to the clerk of this court, it was, therefore, on application of the said petitioner, by his attorney, E. M. Sanford, that a writ of this court be forthwith issued, directing the said surveyor-general and his successors in office to transmit all records and papers in his office in anywise relating to or touching upon said land grant to the clerk of the said court at Denver, in the State of Colorado, with all convenient speed.

Dated at chambers this 2nd day of Feb'y, 1892.

WILBUR F. STONE,  
Associate Justice of the U. S. Court of Private Land Claims.

54 (The cover of said affidavit and order bears the following endorsements: U. S. court private land claims, State of Colorado. In re Algodones Land Co. to confirm grant. Affidavit for order transmitting papers. Filed Feb'y 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy. Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, dup'ty clerk.)

And be it further remembered, that on the same day, to wit, the second (2) day of February, A. D. 1892, a writ was issued by the clerk of this court, which said writ is in the words and figures following, to wit:

In the United States court of private land claims.

In relation petition of Algodones Land Company for confirmation of title

*Writ for transmittal of papers and records.*

55 *The United States of America to Honorable Royal A. Johnson, as Surveyor-General of the District of Arizona, and his successors in office, greeting:*

Whereas, it appears to us that a petition has been filed in the office of the clerk of the United States court of private land claims by the Algodones Land Company, a corporation, to determine the validity and decide upon a certain Mexican land grant known as the Rancho El Paso de los Algodones, situate in Arizona; and

Whereas an application has been made to honorable Wilbur F. Stone, an associate justice of our said court, at chambers in Denver, Colorado, wherein it is shown that you have in your possession the original title aforesaid, and other records and papers relating thereto; and

Whereas on said application it was duly ordered that a writ under the hand of the clerk and seal of this court, do issue to you, directing you to safely transmit to this office, all papers and records in your possession or under your control, which in anywise relate to said Algodones grant, with all convenient speed.

This is therefore to command you that you do safely transmit all the records and papers in your office as surveyor-general of the district of Arizona which in anywise relate to the grant or claim for land within the Territory of Arizona known as the Rancho El Paso de los Algodones aforesaid, in relation to which said petition has been brought under an act of Congress entitled "An act to establish a court of private land claims," approved March 3, 1891, for the purpose of determining the validity of such title, and that the same may be inquired into and decided with all convenient speed.

Witnesseth, the honorable Joseph R. Reed, chief justice of the United States court of private land claims, with the seal of the court affixed. Done at the clerk's office of said court, at the city of Denver, State of Colorado, this the second day of February, A. D. 1892.

[SEAL.]

JAMES H. REEDER,  
Clerk of the United States Court of Private Land Claims,  
By THOMAS B. BALDWIN,  
Deputy Clerk.

(Which said writ bears the following endorsements: In the U. S. court of private land claims. In re petition of Algodones Land Company for confirmation of title. Writ for transmittal of papers and records. Filed Feb'y 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.)

57 Attached to said writ is proof of service thereof, which said proof of service is in the words and figures following, to wit:

*Proof of service.*

TUCSON, A. T., January 9th, 1892.

I hereby certify that I received the within writ on the 9th day of February, 1892, and that I personally served the same upon the said Royal A. Johnson, surveyor-general of the district of Arizona, by delivering to him personally a true copy of the within writ at his office in the city of Tucson, Pima County, Arizona.

This writ returned as the law directs this 9th day of February, 1892.

R. H. PAUL,  
U. S. Marshal.

And be it further remembered that afterwards, to wit, on the second (2) day of March, A. D. 1892, and order was made by one of the justices of this court, which said order is in the words and figures following, to wit:

In the United States court of private land claims, sitting at Denver, Colo.

In re petition of Algodones Land Company for confirmation of title.

58 To Joseph C. Perry, Deputy for U. S. Surveyor-General, District of Arizona:

The matter of a return to the writ for transmittal of records and papers issued in the above-entitled action, dated February 2nd, 1892, and proceedings thereon, which you presented in person to the clerk of this court on February 18th, 1892, and have remained in Denver, Colorado, ever since, awaiting the action of the court thereon, is now under consideration by a full court.

You are requested to remain in Denver with the papers and records referred to until the further order of the court or a judge thereof.

Dated at chambers, Denver, Colo., March 2nd, 1892.

WILBUR F. STONE,  
Associate Justice.

Filed March 2, 1892.

Which said order bears the following endorsements: Order of court to Joseph C. Perry, deputy for U. S. surveyor-general of Arizona Territory. Filed March 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. E.

And be it further remembered, that afterwards, to wit, on the fifth (5) of March, A. D. 1893, an order was made by one of the justices of this court, which said order is in the words and figures following, to wit :

In the United States Court of Private Land Claims, sitting at Denver, Colorado.

In re petition of Algodones Land Company.

*To Joseph C. Perry, Deputy for the Surveyor-General of Arizona :*

On consideration it is ordered that you return to Arizona and take with you the papers in the matter of the rancho del Paso de Las Algodones, and retain same, subject to any order of the above-entitled court, or an associate justice thereof, that may be made in the premises.

Dated at chambers, Santa Fe, N. M., March 5th, 1892.

WILBUR F. STONE,  
*Associate Justice.*

Which said order bears the following endorsements: Order of court to Joseph C. Perry, deputy for the U. S. surveyor-general, dis't of Arizona, to return to Arizona with papers in the matter of rancho del El Paso de los Algodones. Filed March 9, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. "E." Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

And be it further remembered that afterwards, to wit, on the seventh (7) day of March, 1892, an appearance was filed in the office of said clerk, in said city of Denver, Colorado, which said appearance is in the words and figures following, to wit :

UNITED STATES OF AMERICA, ss :

In the court of private land claims, Colorado district, Denver, Colorado.

THE ALGODONES LAND COMPANY, PLAINTIFF,	} No. 1.
vs.	
THE UNITED STATES, DEFENDANT.	

Comes now the United States, by its attorney, and enters appearance in the above-entitled cause.

MATT. G. REYNOLDS,  
*U. S. Attorney.*

Which said appearance of the defendant bears the following endorsements: Rancho El Paso de los Algodones, P. L. C., No. 6, Arizona. Filed March 7, 1892. James H. Reeder, clerk, per Thos. B. Baldwin, deputy clerk. Matt. G. Reynolds, U. S. attorney.

And be it further remembered that afterwards, to wit, on the eighth (8) day of April, A. D. 1892, there was filed in the office of said clerk, at said city of Denver, State of Colorado, an answer, which said answer is in the words and figures following, to wit :

UNITED STATES OF AMERICA, ss:

In the court of private land claims, Colorado district, to the June term, 1892.

ALGODONES LAND COMPANY (A CORPORATION),	}	No. 1.
plaintiff,		
vs.		
UNITED STATES, DEFENDANT.		

*Answer.*

Comes now the United States, by its attorney, Matt. G. Reynolds, and by leave of court files this, its answer to the petition filed in the above-entitled cause, and says:

It has no knowledge or information sufficient to enable it to form a belief as to whether plaintiff is a corporation, duly organized and existing under the laws of the Territory of Arizona, or not. It denies  
62 that plaintiff owns or lawfully holds and possesses a certain tract of land commonly known and described as the rancho El Paso de los Algodones, situated in the southwestern corner of the Territory of Arizona, and fully described and set forth in said petition.

It denies that plaintiff owns, holds, and possesses said land under and by virtue of any lawful instrument in writing, taken and designated as a grant title, bearing date of the 12th day of April, 1838, or any date.

It denies that the alleged grant title of the above-mentioned date was duly made and executed by or on behalf of the State of Sonora of the Republic of Mexico, under and by virtue of the laws therein mentioned, or any other laws.

It denies that the officers duly authorized by law to dispose of the public lands of the State of Sonora did sell or convey to one Señor Don Fernando Rodriguez, on the 12th day of April, 1838, or at any other time, the land described in said petition, or that proper steps as required by law were taken and performed by the officers empowered by law to dispose of the public lands as a condition precedent to the passing of the title from the State.

It says it has no knowledge or information sufficient to enable it to form a belief as to what, if any, official relation Don Jose Justo Milla sustained to the State of Sonora; but it says that he had no warrant or authority under the laws of said State or the Republic of Mexico  
63 to dispose of, upon any condition, the public lands of said State, and that if it appear that he was the auditor-general or paymaster of the treasurer-general of said State, that he had no warrant or authority under the laws of said State to dispose of its public lands.

It denies that he did dispose of or execute for an' on behalf of said State to Señor Don Fernando Rodriguez a grant title to the land described in plaintiff's petition on the 12th day of April, 1838, or at any other time; and it therefore avers that if the plaintiff by proper deraignment of title claims to own and possess said property under a sale and conveyance by said Milla that the same was not his genuine signature but a forgery.

It further avers that said alleged grant title or claim, if any, was never recorded in the book of "Toma de Razon" for the year 1838, or in any other book or record in the archives of said State.

It denies that said alleged grantee, Rodriguez, ever complied with the conditions imposed by the laws of the State of Sonora and the Republic of Mexico upon citizens to whom its public lands were disposed, and avers that the conditions attached to and running with said grant, as imposed by law, as well as by the terms of the grant itself, were never complied with.

That the officers making said alleged grant, if they did so make it, had no warrant or authority to waive the conditions of settlement as imposed by law; that the terms and conditions of settlement imposed by the grant are so indefinite and uncertain and problemetical that they are in violation of law and in excess of the powers of the officers of said State to make.

It further avers that possession and cultivation of the same was never taken and performed as required by law.

It says it has no knowledge or information as to whether the amount of land claimed is correct or not.

That it has no knowledge or information as to whether plaintiff is the legal representative by proper deraignment of title from the alleged original grantee, Rodriguez.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiff be put to its proof on all the allegations in said petition, particularly the genuineness of the signatures of the officers aforesaid, by whose act it is alleged said grant was made, as well as a complainee with all the conditions precedent and subsequent and as required by the act approved March 3, 1891, under which this court assumes jurisdiction of this controversy; and that it shall be put to its proof as to its presented interest, or supposed interest, therein.

Now having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleg'd grant, and for such other and further orders as may seem meet and that this court may be authorized to make in the premises.

MATT. G. REYNOLDS, *U. S. Attorney.*

65 Which said answer bears the following endorsements, to wit:

Case No. 1. File No. 29. Algodones Land Company, plaintiff, vs. United States, defendant. Rancho El Paso de los Algodones grant. Answer. Filed in Denver, Colo., April 8th, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy.

And be it further remembered that afterwards, to wit, on the twenty-fifth day of April, A. D. 1892, there was filed in the office of said clerk at Santa Fe, Territory of New Mexico, a motion, which said motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss:

In the court of private land claims, Santa Fe, New Mexico.

ALGODONES LAND COMPANY, PLAINTIFF,	}	No. 1.
vs.		
THE UNITED STATES, DEFENDANT.		

66

*Motion.*

Comes now the United States, by its attorney, Matt. G. Reynolds, and represents to the court that the original papers relating to the title sought



to be confirmed in the above-entitled cause are not in the custody of Royal A. Johnson, surveyor-general of the Territory of Arizona, his office located at Tucson, in said Territory; that in order that the Government may properly make its defense in said action, it is necessary that it have access to the papers relating to the same.

Testimony is about to be taken on behalf of the plaintiff as well as the Government, at the towns of Hermosillo and Guaymas, in the State of Sonora, Old Mexico, and in order that the same may be properly taken, the original grant papers or expediente of title are absolutely necessary, as well as the exhibits and photographs on file in said office.

Therefore, the defendant asks that an order may be made and directed to said surveyor-general, requiring him to turn over to the clerk of this court, taking his receipt therefor, all the papers on file in his office in any manner relating or pertaining to said claim or grant, and to that end it will ever pray.

MATT. G. REYNOLDS,  
*U. S. Attorney.*

67 Which said motion bears the following endorsements, to wit :  
Algodones Land Co., plaintiff, vs. The United States, defendant.  
Motion. Filed in my office this the 25th day of April, A. D. 1892. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

And be it further remembered that on the same day, to wit, the twenty-fifth (25) day of April, 1892, an order was made by this court, which said order is in the words and figures following, to wit :

UNITED STATES OF AMERICA :

In the court of private land claims, Santa Fe, New Mexico.

ALGODONES LAND COMPANY, PLAINTIFF,	} No. 1.
<i>vs.</i>	
THE UNITED STATES, DEFENDANT.	

*To Royal A. Johnson, Surveyor-General, Territory of Arizona :*

You are hereby commanded and directed to deliver to the clerk of this court, James H. Reeder, taking his receipt therefor, all of the papers on file in your office relating or pertaining to a claim against the United States, on file therein, commonly known and designated as the "El Paso de los Algodones grant."

68 Given under the hand of the chief justice of the court of private land claims, attested by the seal of said court, at Santa Fe, New Mexico, this 25th day of April, A. D. 1892.

JOSEPH R. REED,  
*Chief Justice.*

Which said order bears the following endorsements, to wit :

TERRITORY OF ARIZONA, COUNTY OF PIMA.

I hereby certify that I received the within order on the 25th day of April, 1892, and personally served the same on the 27th day of April, 1892, by delivering to Royal A. Johnson, surveyor-general of Arizona, at at his office in the city of Tucson, in said Territory, a true copy of said order.

R. H. PAUL,  
*U. S. Marshal.*

Dated Tucson, A. T., April 27th, 1892.

Also this endorsement :

Order. Filed in my office this the 1st day of May, 1892.

JAMES H. REEDER, *Clerk*,  
By IRENEO L. CHAVES, *Deputy*.

And be it further remembered that afterwards, to wit, on the sixth (6) day of June, A. D. 1892, the same being the second day of the June term of this court, at Denver, Colorado, the following proceedings were had, to wit :

69 Court met this day at 10 a. m.

Present : Hon. Joseph R. Reed, chief justice ; Hon. Wilbur F. Stone, associate justice ; Hon. W. W. Murray, associate justice ; Hon. Henry C. Sluss, associate justice ; Mr. Matt. G. Reynolds, U. S. atty. ; Mr. Albert H. Jones, marshal ; Mr. Euebio Chacon, translator ; Mr. Thomas B. Baldwin, dep. clerk. Absent : Hon. Thos. C. Fuller, associate justice ; Mr. James H. Reeder, clerk.

Now, at this day the cause of the Algodones Land Company, plaintiff, vs. The United States, defendant, was called for trial, and the parties announcing themselves ready, same was proceeded with. The hearing of said cause not being completed, the court adjourned until 10 o'clock a. m. the following day.

The record shows the trial of said cause was resumed on the following day, to wit, the 7th day of June, A. D. 1892, the same being the third (3) day of the June term at Denver, Colorado, and adjourned to the following day ; that on the following day said cause was resumed, to wit, on the eighth day of June, the same being the fourth (4) day of said June term, and then adjourned to the following day.

On the following day, to wit, the ninth (9) of June, the same being the fifth day of the said June term, at Denver, Colorado, the court announced its conclusion that plaintiff's claim be rejected, and the petition be dismissed. Whereupon it was ordered that plaintiff have until

70 to-morrow morning to file petition for rehearing.

Court met on the following day, to wit, the tenth (10) day of June, the same being the sixth (6) day of said June term, 1892, of said court at Denver, Colorado, and having heretofore announced its opinion in the case of the Algodones Land Company, plaintiff, vs. The United States, defendant, holding that the plaintiff's petition should be dismissed, and plaintiffs having filed a petition for rehearing, it is ordered that said petition stand continued to the August term at Santa Fe, N. M.

And be it further remembered that afterwards, to wit, on the fifteenth (15) day of August, 1892, the same being the first (1) day of the August term of this court (1892), at Santa Fe, Territory of New Mexico, the following among other proceedings were had, to wit :

ALGODONES LAND COMPANY, PLAINTIFF, }  
 vs. } No. 1. (Denver.)  
 THE UNITED STATES, DEFENDANT }

Comes now this cause, on the first day of August term, A. D. 1892, at Santa Fe, New Mexico, to be heard upon the application for a new trial herein on behalf of the plaintiff; and comes the plaintiff, by its attorneys, Coe & Carpenter, A. M. Stevenson, and E. M. Sanford; and comes the defendant by Matt. G. Reynolds, United States attorney for this court; and the court being duly informed in the premises does consider and order that a trial de novo herein be, and the same is hereby, granted, and the judgment heretofore entered in this cause be, and the same is hereby, wholly set aside, vacated and held for naught, and the said cause be continued until the October term of this court at Denver, Colorado.

It is further ordered that the clerk of this court do transmit a certified copy of the foregoing order to the office of the clerk of this court at Denver, there to be by him filed and recorded in this cause.

And be it further remembered that afterwards, to wit, on the thirtieth (30) day of August, the same being the sixteenth (16) day of the August term of said court, sitting at Santa Fe, Territory of New Mexico, the following order was made by the court, to wit :

It is ordered that the term of this court heretofore established at Denver, Colorado, be discontinued on and after the first day of October, 1892, and that all causes which may be pending on said first day of October, on the docket at that place, be transferred for trial and final disposition at Santa Fe.

It is also ordered that the clerk remove all records, files, and documents and papers pertaining to his office in Denver, or to any cause pending in the court there, to the office at Santa Fe.

In accordance with the foregoing order, all causes which were pending on the said first day of October on the docket at Denver, Colorado, were transferred for trial and final distribution at Santa Fe on the day of October, 1892, among which being the case of the Algodones Land Company vs. The United States, it being No. 1 on the dockets of said court at Denver, and on being transferred to Santa Fe the number of said case was changed and now appears as No. 47 on the docket of said court at Santa Fe.

And be it further remembered that afterwards, to wit :

On the fourteenth day of December, 1892, the same being the thirteenth (13th) day of the December term, 1892, the following proceedings were had, to wit :

THE ALGODONES LAND COMPANY, PLAINTIFF, }  
 vs. } No. 47.  
 THE UNITED STATES, DEFENDANT }

Come now the parties in the above-entitled cause, plaintiffs appearing in person and by their attorneys, Earle B. Coe, esq., A. M. Stevenson, S.

L. Carpenter, and E. M. Sanford, esqs., and the United States by Matt. G. Reynolds, esq., United States attorney. Upon motion of Mr. Reynolds Francis J. Hiney, esq., was allowed to associate himself in this cause with the United States attorney. Thereupon the parties in the above-entitled cause announced themselves ready for trial. Plaintiffs being put to their proof as to the allegations in their petition and to show cause why said grant should be confirmed unto them, introduced *and* oral and documentary evidence. Here action in said cause was suspended.

Court adjourned until to-morrow at 10 o'clock a. m.

Upon the trial of this cause on said above-named day, to wit, the fourteenth day of December, A. D. 1892, the following testimony, oral and documentary, was offered and introduced :

On motion of the plaintiff, the Algodones Land Company, by its attorneys, Earl B. Coe was substituted as plaintiff in this action, as succeeding to all the right, title, and interest of said Algodones Land Company, and that this cause be prosecuted and proceeded with in the name of Earl B. Coe, plaintiff, versus The United States, defendant.

Mr. STEVENSON. We offer first the original title paper or testimonio of the grant of the land involved in this controversy by the state of Sonora to Fernando Rodriguez, dated on the 12th of April, 1838, and ask that it be marked petitioners' Exhibit A.

#### EXHIBIT A.

Is a document in the Spanish language, a translation of which was offered, attached to the petition filed in this cause, and marked Exhibit B of said petition ; which said translation and Exhibit B of said petition is incorporated in this transcript and commences on page twelve (12) and ends on page fifty (50) hereof.

Mr. STEVENSON. Now offer certificate signed by Juan Jose Encinas, alcalde city of Hermosillo, State of Sonora, as to the capability of Rodriguez to stock the land in controversy, dated Hermosillo, 27th of March, 1838. (Petitioner's Exhibit B.)

#### EXHIBIT B.

Said exhibit is in the Spanish language ; a translation thereof is in the words and figures following, to wit :

Third seal (l. s.), 2 reales for the years 1837 and 1838.

Juan Jose Encinas, second alcalde of the city of Hermosillo.

I certify, so far as I am able, must, and the law permits me, that Señor D. Fernando Rodriguez of this community has means and proportions sufficient and adequate to settle and cultivate the five sitios of land that he registered on the 4 of January last, and that were adjudged to him by the treasury-general of the State, embraced in the lands that are contiguous to the Gila and Colorado rivers, frowning their confluence, as also the Paso de los Algodones of the said Colorado River on the northern boundary of this State, and that it may be a record where it corresponds I give him the present as duplicate, at his request, in Hermosillo, on the

27 day of March of the year 1838, authorized and signed with attending witnesses. For lack of a notary, as there us none according to law, I attest.

JUAN JOSE ENCINAS. [RUBRIC.]

Witt: JULIAN RODRIGUEZ. [R.]

Witt: SANTIAGO SANCHEZ. [R.]

ARISPE, 14 day of April, 1838.

Let a copy be attached to the original expediente and another to the title of the grant.

JOSE JUSTO MILLA. [R.]  
(Official translatio'.)

Mr. STEVENSON. We offer a certificate of Jose Maria Mendoza as treasurer-general of the State, dated 21st day of December, 1840, certifying that he had received a letter and attached certificate from the Supreme Government relating to the lands in this case. (Petitioner's Exhibit C.)

#### EXHIBIT C.

Said exhibit is in the Spanish language; the translation thereof is in the words and figures following, to wit:

Jose Maria Mendoza, superior chief of the treasury department of Sonora, certifies that from his excellency, the senior minister of state of del despacho de hacienda of the Republic, he has received his supreme order, of which the following is a copy:

#### "MINISTERIO. DE HACIENDA.

SECTION 2. In view of the notes of your honors, numbers 7, 273, 403, and 414, dated February 23rd, 1839, May 26th, 17th of October, and 5th of November last, in which you ask for instructions as to the manner of proceeding in relation to vacant lands in that department, his excellency the President has thought proper to resolve: That until by legislative proceedings all doubts may be removed in relation to vacant lands, the initiative being previously taken by this ministry, you will direct that in matters relating to the lands referred to they shall be determined in the junta de hacienda (board of the treasury), which shall be formed in the manner directed in a separate order of this date.

In answering your official communication, No. 6, of the 23rd of February, 1839, and in accordance as well with article 74 of the decree of the 17th of April, as well as the law of 7th of December of the same year, the proper junta (board) dictating the necessary measures in the matter as far as their faculties may extend, and when these matters shall reach the sphere contencioso they shall be passed to the judge of the district for his determination. You will bear in mind that in the said initiative that with respect to vacant land this ministry proposes to make to the national congress the point must be taken into consideration as to whether or not they are to remain assigned to the "Banco Nacional de Amortex Acon,"

with the understanding that his excellency has directed that, notwithstanding the order which I communicated to you on the 23rd of January of the present year and to the government of the department on the 3rd of September last, in which it is declared that there shall only be delivered to the agent of the bank such property and public land as may not be occupied by the Government or may be of interest to the service,

77 you will suspend the delivery to the said agent of the land that may not yet have been received until it shall be determined whether or not they pertain to the bank, and if some have already been delivered you will recover the same, to the end that in all things these matters may be administered and dispatched in the manner as set forth. I say this to you by supreme order and in reply to your inquiry for the corresponding ends, with the understanding that on this day I communicate the same to the government of the department and to the junta directory (board of directors) of the said national bank for their information and the necessary ends.

God and liberty.

ECHEVERRIA.

MEXICO, December 21st, 1840.

*To the Superior Chief of the Treasurer of Sonora :*

I also certify that by virtue of the foregoing supreme order the senior agent of the Banco Nacional de Amortex Acon, in the department Licenciado, Don Manuel Maria Gazeola, a resident of Alamo, returned to me the expedienti and other documents in relation to lands and vacant lands which had been transmitted to him by this gefatura, in consequence of which he had continued administering and dispatching the said business of lands on account of the public treasury under his charge in accordance with the laws, decrees, and regulations governing these matters also

78 in the terms expressed in the supreme order of the 21st of December last before referred to.

In witness whereof and for the security of the Senior Don Fernando Rodriguez, a resident of Hermosillo, in relation to his lands named Paso de los Algodones de Rio Colorado, and in front of the confluence of this with the Gila, I give this at his request in Ures, on the 30th of May, 1841, on this common paper for want of the corresponding paper of the 4th seal, and with the obligation on the part of the interested party to attached the required stamped paper, as required by law in relation to revenues.

JOSE MARIA MENDOZA."

Mr. STEVENSON. We offer certificate of Jose Maria Mendoza, treasurer-general of the State of Sonora, dated on the 6th of June, 1847, certifying that he had corresponded with the supreme Government of Mexico relative to the grant to Rodriguez. (Petitioner's Exhibit D :)

#### EXHIBIT D.

Said exhibit is in the Spanish language ; the translation thereof is in the words and figures following, to wit :

(L. S. Commissary-General, State of Sonora.)



JOSE MARIA MENDOZA, commissary-general of the State of Sonora :

I certify that with this date I have sent on a separate sheet, and  
79 as a matter of communication to his excellency the minister of state  
and the land office of the Republic, the official communication, that is  
the following :

"Commissary-General of the State of Sonora :

Most Excellent Sir : Señor D. Fernando Rodriguez, a resident of the  
city of Hermosillo, has presented to me the grant title that the treasury-  
general of the (torn) State executed to his favor on the 12 day of April,  
1838, for five sitios of public land for agriculture, the said Señor Rod-  
riguez, registered contiguous to the Gila and Colorado rivers fronting  
their confluence and the place called the Paso de los Algodones, of the  
said Rio Colorado, on the north of this State, and that (torn) surveyed,  
valued, proclaimed, and sold at auction, given and adjudicated in the terms  
appearing from the authorized testimonio, which I have the honor to send  
to you with this, to the end that, as I attentively pray, you may bring to  
the knowledge of his excellency the President of the Republic, which is  
the object for which the said S. D. Fernando Rodriguez has presented to  
me the said title of the grant of the confluence of the Gila and Colorado  
and Paso de los Algodones.

I enjoy the honor of stating to your excellency my greatest veneration  
(torn) respectful regards.

God and liberty.

JOSE MARIA MENDOZA.

URES, *Juna* 6, 1847.

His excellency the minister of state and of the land office of the Republic  
Mexico.

And that it may be a record where it corresponds, I extend the  
80 present at the request of the interested party, Sr. D. Fernando  
Rodriguez, at Ures, capital of the State of Sonora, on the 6 day  
June, 185 (the last number torn).

JOSE MARIA MENDOZA [R.]

(Official translation.)

Mr. STEVENSON. Offer certificate signed by Jose Maria Mendoza and  
Florencio Trejo, dated 5th of January, 1858, certifying that they had exam-  
ined the title papers in this case, and find same are genuine; attached also  
we offer certificate of Pesguerra, the then governor of the State, certifying  
to the genuineness of the signature of Mendoza and Trejo. (Petitioner's  
Exhibit E.)

#### EXHIBIT E.

Second class (L. S.). Seal. 3-4 reals for the years 1858 and 1859.

Jose Maria Mendoza, pensioned commissary-general of Sonora, and chief  
of yhr section of liquidation of the defunct departmental treasury, and  
Florencio Trejo, second officer that was, of the general (treasury) of this  
State, employed in the said section of liquidation.

We certify, so far as we are able, must, and are by law permitted, that  
in the said office of our charge exists the *the* original expediente of  
81 the lands called "El Paso de los Algodones," made in the year 1838,  
following the registracion made by Señor D. Fernando Rodriguez,

resident of Hermosillo; the survey of which was made according to the laws bearing upon the subject, and it includes five sitios of land located at and contiguous to the Gila and Colorado rivers, fronting their confluence; that the corresponding auctions and sale, and entire into the public general treasury of the State of Sonora, having been verified, this (the treasury) executed the corresponding grant title in favor of the said Señor D. Fernando Rodriguez; and finally, we certify that *that* the original expediente having been found in that portion of the archives corresponding to the said treasury, that exists in Arispe, it was sent with others to us after the detailed report on lands was formed, which, on the 29th of December last, we gave to the government of the State, and that it may be a record where it corresponds, we extend the present at the request of the said party in interest, at Ures, on the 15th day of January, 1858.

JOSE MARIA MENDOZA. [R]  
FLORENCIO TREJO. [R]

(L. S. Republic of Mexico, government of the State of Sonora).

Ignacio Pesquerra, constitutional governor of the State of Sonora, certifies that the signatures of the employees that authorize the present certificate is that which they use in the official and particular papers that they give out, and for its effects I give the present at the city of Hermosillo, on the 10 day of September, 1858.

Y. PESQUIERA. [R]  
J. GUTTIERREZ, [R]  
*Secretary.*

(Official translation.)

Mr. STEVENSON. Now offer certificate of Jose de Aguilar, dated Guaymas on the 8th day of June, 1857, certifying that the grant of land in this case to Rodriguez, had been approved by the supreme Government. (Petitioner's Exhibit F.)

#### EXHIBIT F.

Said exhibit is in the Spanish language; the translation thereof is in the words and figures following, to wit:

Third seal (L. s.) 4 reals for the years 1856, 1857 (L. s.), Republic of Mexico, government of the State of Sonora.

The lawyer, Jose de Aguilar, governor of the State of Sonora:

I certify, in due form of law, that the present title which embraces five sitios of land contiguous to the Gila and Colorado rivers fronting their confluence, as also the place called the Paso de los Algodones of the said Colorado

83 River on the north boundary of this State, surveyed and adjudged in the year 1834 to Don Fernando Rodriguez, resident and native of Hermosillo, was duly extended by the late Don Jose Justo Milla, auditor of the treasury-general of the State, and lawfully in charge of the treasury at the time referred, and who by virtue of it was competent authority to make expedientes of lands, as also that his signature, that of the attending witnesses, and the seal stamped on said title, are the same that they

used in their official acts, and by which they have legalized all their acts of like nature, I finally certify that the approval of the government which is attached to the title, and the certificate of Don Jose Ma. Mendoza are legal, and their signatures are those that they have used in the affairs of their charge, and as such have deserved all faith and credit in the judicial and extrajudicial, and at the request of the party in interest, I extend this at this port of Guaymas on the 8' day of June, 1857.

JOSE DE AGUILAR. [RUBRIC.]

(Official translation.)

Mr. STEVENSON. Now offer deed for Maria Aguilar and others to Juan A. Robinson, dated October 18th, 1873. (Petitioner's Exhibit G.)

#### EXHIBIT G.

84 Which said exhibit is in the words and figures following, to wit:  
This indenture, made the eighteenth day of October, in the year of our Lord one thousand eight hundred and seventy-three, between Maria Antonia Aguilar, widow of Fernando Rodriguez, Fernando Rodriguez, Antonia Rodriguez, Joaquin Rodriguez, Francisco Rodriguezp, Adelaida Rodriguez, and her husband, Carlos E. Hale, and Carmen Rodriguez and her husband, Wenceslao Y. Cerri, and Annalia Rodriguez and her husband, Juan R. Moller, of the State of Sonora, Republic of Mexico, parties of the first part, and Juan A. Robinson, of the city and county of San Francisco, State of California, United States of America, the party of the second part.

Witnesseth, that the parties of the first part for and in consideration of the sum of one dollar, lawful money of the United States of America, and of other good and valuable considerations, unto the said parties of the first part moving, from the party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part and to his heirs and assigns forever, all the right, title, and interest of the parties of the first part in and to the rancho known as "Paño de los Algodones," consisting of five Mexican leagues of land in Yuma County, Territory of Arizona, United States of America, and situated at the confluence of the

Colorado and Gila rivers, said rancho having been heretofore, to  
85 wit, in the year 1838, granted by the Mexican authorities to Fernando Rodriguez, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

	MARIA ANTONIO AGUILAR DE RODRIGUEZ.	[SEAL.]
	F. RODRIGUEZ.	[SEAL.]
	M. ANTONIA RODRIGUEZ.	[SEAL.]
	JOAQUIN RODRIGUEZ.	[SEAL.]
	FRANCISCO RODRIGUEZ.	[SEAL.]
	ADELAIDA RODRIGUEZ DE HALE.	[SEAL.]
	CHAS. E. HALE.	[SEAL.]
	CARMEN RODRIGUEZ DE HERRI.	[SEAL.]
86	W. HERRI.	[SEAL.]
	AMALIA RODRIGUEZ DE MOLLER.	[SEAL.]
	J. N. MOLLER.	[SEAL.]

Signed, sealed, and delivered in the presence of—

EMO CLAUSEN.

A. WILLARD,

*U. S. Consul.*

[Seal U. S. consul.]

CONSULATE OF THE UNITED STATES OF AMERICA,

*At Guaymas, Mexico.*

I, the undersigned consul of the United States of America for Guaymas, Mexico, and the dependencies thereof (duly commissioned and appointed), do hereby certify that, on this eighteenth day of October, A. D. 1873, personally appeared before me, Maria Antonia Aguilar (de Rodriguez), widow of Fernando Rodriguez, of Sonora, Mexico; Fernando Rodriguez, Antonia Rodriguez, Joaquin Rodriguez, Francisco Rodriguez, Adelaida Rodriguez (de Hale) and her husband, Carlos E. Hale; Carmen Rodriguez (de Cerri) and her husband, Wencelasy Cerri; Amalia Rodriguez (de Moller) and her husband, Juan A. Moller; known to me to be the only heirs of Fernando Rodriguez, of Sonora, Mexico (deceased), and the persons who are described in, and who executed the foregoing instrument or deed, and who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned. And I further certify that Adelaida Rodriguez de Hale, wife of

87 Carlos E. Hale; Carmen Rodriguez de Y Cerri, wife of Wenceslas Y Cerri, and Amalia Rodriguez de Moller, wife of Juan A. Moller, known to me to be married women (whose names are subscribed as aforesaid), that they were made acquainted by me separately with the content of the foregoing instrument and acknowledged, on examination apart from and without the hearing of their husbands, that they executed the signing of said document or instrument freely and voluntarily, without fear or compulsion or undue influence of their husbands, and they do not wish to retract the execution of the same.

In witness whereof and in testimony of all the foregoing, I have set my hand and affixed the seal of the consulate at Guaymas, the day and year before written.

[Seal of U. S. consul.]

A. WILLARD,

*Consul.*

Across the last page thereof is written the following, to wit:

Recorded in the office of the county recorder of the city and county of San Francisco, January 26th, A. D. 1874, at 21 mins. past 3 p. m., in liber 729 of deeds, page 48.

O. W. FRANK,  
County Recorder.

Which said deed bears the following endorsements, to wit: Oct. 88 18'-73. No. 11. Doc. 4. Deed. Ex. G. F. No. 4. Maria Antonia Aguilar and others to Juan A. Robinson. Dated October 18th, 1873. Exhibit D. Ex. D filed Dec. 22d, 1879. Juan Wasson, U. S. Sur. General. Recorded at the resquetos Juan A. Robinson, Jan. 26, A. D. 1874, at 21 min. past 3 p. m. in liber 729 of deeds, page 48., No. 11 in docket journal, vol. 21, p. 59-62. \$5.50. 10. Ex. D. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed in my office at Santa Fe in 18th October, '92. James H. Reeder, clerk. B. I. L. Chaves, dp'y.

Mr. STEVENSON. Deed from Juan A. Robinson to the Colorado Commercial and Land Company of the land in controversy, dated November 29th, 1873. (Petitioner's Exhibit H.)

#### EXHIBIT H.

Which said exhibit is in the words and figures following, to wit:

This indenture made the twenty-ninth day of November, in the 89 year of our Lord one thousand eight hundred and seventy-three, between Juan A. Robinson, of the city and county of San Francisco, State of California, the party of the first part, and the Colorado Commercial and Land Company, a corporation duly incorporated under the laws of the State of California, the party of the second part.

Witnesseth that the said party of the first part, for and in consideration of the sum of five (5.00) dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and of other good and valuable considerations unto the said party of the first part moving from the said party of the second part, has bargained, granted, sold, and transferred, and by these presents does bargain, sell, and transfer unto the said party of the second part, and to its successors and assigns forever, all the right, title, and interest of the party of the first part in and to the rancho "Paso de los Algodones," being that certain tract, piece, or parcel of land lying and being and situated in the Territory of Arizona, Yuma County, at the confluence of the rivers Colorado and Gila, opposite Fort Yuma, consisting of five (5) leagues or "sitios" of land, which rancho was ceded and

90 granted to Fernando Rodriguez, deceased, by the Mexican authorities in the year 1838, and by the heirs of said Fernando Rodriguez sold and conveyed to the party of the first part, the boundaries and particular description of said rancho Paso de los Algodones being fully set forth in the original deed of concession from the Mexican authorities to Fernando Rodriguez, which deed of concession or grant was recorded in a book of Spanish land titles, page 93 to 110, inclusive, on the 23rd day of December, 1865, by John H. Archibald, recorder, which book of Spanish land titles is now in the county recorder's office of Pima County, Territory of Arizona.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

91 In witness whereof the said party of the first part has hereto set his hand and seal the day and year first above written.

JUAN A. ROBINSON. [SEAL.]

Signed, sealed, and delivered in the presence of—  
E. V. JOICE.

Attached to said deed is the following certificate, to wit:

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this twenty-ninth day of November, A. D. one thousand eight hundred and seventy-three, before me, E. V. Joice, a commissioner of deeds for the Territory of Arizona in and for said city and county, duly commissioned and sworn, personally appeared the within-named Juan A. Robinson, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the individual described in and who executed the said annexed instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first mentioned.

[SEAL.]

E. V. JOICE,

*Commissioner of Deeds for the Territory of Arizona.*

92 Across the last page of said deed is written the following, to wit:

Recorded in the office of the county recorder of the city and county of San Francisco January 26th, A. D. 1874, at 22 mins. past 3 p. m., in liber 729 of deeds, page 51.

O. W. FRANK,

*County Recorder.*

(Which said deed bears the following endorsements, to wit: Nov. 29/73. No. 12. Deed. Ex. H. Juan A. Robinson to Colorado Commercial and Land Company. Dated, Nov. 29th, 1873. City and co. of San Francisco. Recorded at the request of Juan A. Robinson Jan. 26, A. D. 1874, at 22 min. past 3 p. m., in liber 729 of deeds, page 51. 21/2. Fi. No. 10. 10. 9.

Recorded March 23rd at 9 a. m., A. D. 1874, on pages 638 and 639, book one of deeds of Yuma County records, at request of Samuel Purdy,



jr., by James Sparrs, county recorder. Exhibit E. No. 12 in docket. Journal, 11 pgs., 62-65. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.

93 Mr. STEVENSON. Offer deed of the same land, dated January 25, 1892, by the Colorado Commercial and Land Company to Elisha M. Sanford. (Petitioner's Exhibit I.)

### EXHIBIT I.

Which said exhibit is in the words and figures following, to wit :

This indenture, made and entered into this 25th day of January, 1892, by and between the Colorado Commercial and Land Company, a corporation, the party of the first part, and Elisha M. Sanford, of Prescott, Arizona, the party of the second part :

Witnesseth that the said party of the first part, for and in consideration of the sum of five hundred (\$500.00) dollars and other good and valuable considerations to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto Elisha M. Sanford, the party of the second part, and to his heirs and assigns forever, all the right, title, and interest of the party of the first part in, to, and upon that certain real property lying and being situate in the county of Yuma, in the Territory of Arizona, and known, bounded, and described as follows, to wit :

94 Section one (1), two (2), eleven (11), twelve (12), twenty-five (25), thirty-six (36), three (3), ten (10), fourteen (14), thirteen (13), twenty-four (24), twenty-three (23), twenty-six (26), thirty-five (35), and thirty-four (34), in township No. ten (10) south, range twenty-five (25) west of the Gil' and Salt River base and meridian ; also section four (4), five (5), six (6), seven (7), eight (8), seventeen (17), eighteen (18), and nineteen (19), the northwest quarter of section three (3) ; the north one-half ( $\frac{1}{2}$ ) and southwest quarter of section (9), the west one-half ( $\frac{1}{2}$ ) of section twenty (20), the north one-half ( $\frac{1}{2}$ ) and southwest one-quarter ( $\frac{1}{4}$ ) of section thirty (30), and northwest one-fourth ( $\frac{1}{4}$ ) of section thirty-one (31), in township ten (10) south, range twenty-four (24) west of the Gil' and Salt River base and meridian ; also sections one (1), two (2), three (3), four (4), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), and northwest one-quarter ( $\frac{1}{4}$ ) of section twenty-four (24), and the north half ( $\frac{1}{2}$ ) and southwest one-quarter ( $\frac{1}{4}$ ) of section twenty-six (26), and section (5), in township nine (9) south, range twenty-four (24) west of the Gila and Salt River base and meridian ; also section six (6) and the northwest quarter of section five (5), and the north half ( $\frac{1}{2}$ ) of the southwest one-quarter ( $\frac{1}{4}$ ) of section seven (7), in township nine (9) south, range twenty-three (23) west of the Gila and Salt River base and meridian. Sections nineteen (19), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32), and the south half ( $\frac{1}{2}$ ) of sections twenty (20) and twenty-one (21), and the northwest quarter and southwest quarter of twenty-eight (28), in township eight (8), south, range twenty-three

(23) west, Gil' and Salt River base and meridian; also sections twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), thirty-six (36), thirteen (13), fourteen (14), twenty-two (22), twenty-eight (28), and thirty-three (33), in township eight (8) south, range twenty-four (24) west, Gila and Salt River base and meridian. Also that certain tract of land lying north of the San Bernardino base and meridian and west of the village of Yuma, and within the said county of Yuma.

Also commencing at the southwest corner of section thirty-one (31), township ten (10) south, range twenty-four (24) west, thence running south to the international boundary line; thence west along said boundary line to the Colorado River; thence up the main channel of said river to a point west of said southeast corner of said section thirty-one (31); thence east along the westerly prolongation of the south line of said section to the southeast corner of said section and place of beginning.

The said property and description thereof described and intended  
96 to be described is that certain real property known as the Rancho

El Paso de los Algodones grant, granted by the State of Sonora, Republic of Mexico, to Senor Don Fernando Rodriguez by an instrument of writing bearing date April 12th, 1838, and therein described as being five square leagues of land contiguous to the Colorado River, situate in front of the confluence of the same with the Gila River and opposite the point named El Paso de los Algodones, and more particularly described according to the United States survey thereof, on file and of record in the office of the Surveyor-General of the United States, at Tucson, Arizona, and record and survey thereof, as aforesaid, reference is hereby hereunto had and made for a more definite and certain description of said property as if the same were written at length herein. Together with all and singular the elements, heredisaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainders and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances, unto the said party *pf* the second part and to his heirs and assign' forever.

In witness whereof the said party of the first part, by resolution of its board of directors, hath caused these presents to be subscribed by its president and secretary and its corporate name and seal to be hereunto affixed the day and year first above written.

97 [SEAL.] COLORADO COMMERCIAL AND LAND COMPANY,  
By G. AUDEADE, *President*.

Attest:

W. W. SANDERSON, *Secretary*.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 25th day of January, 1892, before me, Geo. A. Young, a notary public in and for the city and county of San Francisco, State of California, personally appeared G. Audeade, personally known to me to *the* the president of the Colorado Commercial and Land Company, the corpora-

tion described in and that executed the foregoing instrument, and who acknowledged to me that such corporation executed the same freely and voluntarily and for the uses, purposes, and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first before written.

GEO. A. YOUNG,

*Notary Public in and for said City and County.*

(Geo. A. Young, notary public.)

Recorded at request of E. M. Sanford, January 28th, 1892, at 5 o'clock p. m.

J. L. REDONDO,

*County Recorder.*

# TERRITORY OF ARIZONA,

*County of Yuma, ss:*

98 I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of endenture from the Colorado Commercial and Land Company to Elisha M. Sanford, as the same appears of record in my office in Book 7 of Deeds, page #504 et seq.

Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements: "I—Ex." Filed June 6th, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.

Mr. STEVENSON: Deed from E. M. Sanford and Francis L. Sanford, his wife, to the Algodones Land Company, for the same land, dated the first day of February, 1892. (Petitioner's Exhibit J.)

## EXHIBIT J.

Which said exhibit is in the words and figures following, to wit:

99 This deed made the first day of February, in the year 'f our Lord one thousand eight hundred and ninety-two, between Elisha M. Sanford and Francis L. Sanford as his wife, of Prescott, Arizona, the parties of the first part, and the Algodones Land Company, a corporation erected and organized under and by virtue of the laws of the Territory of Arizona, the party of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sale, issuance, transfer, and delivery by said party of the second part to the said Elisha M. Sanford of one million four hundred and ninety-nine thousand five hundred dollars of the full paid-up nonassessable capital stock of said corporation, and for the further consideration of correctly stating the true date of the execution and delivery of a certain deed, bearing date the thirtieth day of January, A. D. 1892, wherein the parties therein were the parties as herein stated, and recorded in the office of the county recorder of the county of Yuma, Territory of Arizona, at page #529 of deed records of said office, so as to recite that the same was exe-

cutted upon and delivered upon its true date, to wit, the first day of February, A. D. 1892, the receipt of which said shares and capital stock is hereby confessed and acknowledged, have remised, released, sold, quit-claimed, and confirmed, and by these presents to sell, remise, release, quit-claim, and confirm unto the said party of the second part, and to its successors and assigns forever, all the right, title, interest, claim, and demand which the said parties of the first part, have in the following-described property situate, lying, and being in the county of Yuma, Territory of Arizona, namely:

100 The Rancho El Paso de los Algodones land grant, more particularly described in a certain deed, bearing date the twenty-fifth (25th) day of January, 1892, wherein the Colorado Commercial and Land Company is grantor and said Elisha M. Sanford is grantee, and recorded in the office of the county recorder of said county of Yuma, at page five hundred and four et seq. of book seven (7) of deeds records of said office, to which said deed, and the record thereof as aforesaid, reference is hereby hereunto had and made for a more definite and certain description of the land and property herein conveyed and intended so to be.

Expressly reserving, saving, and excepting from this conveyance so much and more of said property as was heretofore conveyed by the said parties of the first part to Abe Frank, as mayor of the village of Yuma, in trust for the use and benefit of the occupants of the townsite of Yuma, by deed bearing date the thirtieth day of January, A. D. 1892, and recorded in the office of the county recorder of said county on the 23rd day of February, 1892, at page five hundred twenty-five (525) of book seven (7) of deeds records of said county.

To which said last-mentioned deed, and the record thereof as last aforesaid, reference is hereby hereunto had and made for a more definite and certain description of the property reserved and excepted from this  
101 conveyance, as if said deed last aforesaid mentioned, or the record last aforesaid mentioned, was herein written at length.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of said parties of the first part, either in law or equity, including all right of dower of the said Francis L. Sanford, wife as aforesaid to the only proper use, benefit, and behalf of the said party of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ELISHA M. SANFORD. [SEAL.]  
FRANCIS L. SANFORD. [SEAL.]

TERRITORY OF ARIZONA,  
County of Yuma, ss:

Before me, Charles H. Brinley, a clerk of the district court of the third judicial district of the Territory of Arizona, in and for the county of Yuma, on this day personally appeared Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and

consideration therein expressed; also on the same day personally  
 102 appeared Francis L. Sanford, known to me to be the person whose  
 name is subscribed to the foregoing instrument, and having been  
 examined by me privily and apart from her husband, and having the same  
 fully explained to her, she, the said Francis L. Sanford, acknowledged  
 said instrument to be her act and deed, and declared that she had willingly  
 signed the same for the purposes and consideration therein expressed, and  
 that she did not wish to retract the same.

Given under my hand and seal of office this twenty-fourth day of  
 February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,

*Clerk of the District Court aforesaid.*

Recorded at the request of J. H. Carpenter, March 7th, 1892, at 15  
 minutes past 2 o'clock p. m.

J. L. REDONDO,

*County Recorder.*

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

I, J. L. Redondo, county recorder in and for the county of Yuma,  
 Territory of Arizona, do hereby certify that the foregoing is a true and cor-  
 rect copy of deed from Elisha M. Sanford and Francis L. Sanford to the  
 Algodones Land Company, as the same appears of record in my office in  
 book 8 of deeds, page 545 et s'q.

103 Witness my hand and seal of office this 26th day of May, A. D.  
 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements, to wit: Filed June  
 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.  
 Ex. J. Re filed Oct. 18, '92. James H. Reeder, clerk; I. L. Chaves,  
 deputy clerk.

Mr. STEVENSON. Deed dated 21st of September, 1892, by the Algo-  
 dones Land Company to Earl Coe, to the same land. Petitioner's  
 Exhibit K.

#### EXHIBIT K.

Which said exhibit is in the words and figures following, to wit:

This indenture, made this twenty-first day of September, A. D. 1892,  
 between Algodones Land Company, a corporation created, organized, and  
 existing under and by virtue of the laws of the Territory of Arizona, the  
 party of the first part, and Earl B. Coe, of Denver, State of Colorado,  
 the party of the second part, witnesseth, that the said party of the first  
 part, for and in consideration of the sum of one dollar and of other  
 104 good and valuable considerations to the said party of the first part  
 in hand paid by the said party of the second part, the receipt  
 whereof is hereby acknowledged, does by these presents grant, bargain,  
 sell, and convey unto the said party of the second part, and to his heirs  
 and assigns forever, all the right, title, interest, claim, demand, and posses-

sion of the said party of the first part of, in, and to those certain lands and premises situate, lying, and being in the county of Yuma, Territory of Arizona, known, named, and described as follows, to wit: The Rancho El Paso de los Algodones Mexican land grant, more particularly described in a certain deed bearing date the twenty-fifth day of January, A. D. 1892, wherein the Colorado Commercial and Land Company is grantor and Elisha M. Sanford is grantee, and recorded at page five hundred and four (504) of book seven (7) of deed records in the office of the county recorder of the county of Yuma aforesaid, to which said deed, and record thereof as aforesaid, reference is hereby hereunto had and made for a more certain and definite description of the property herein conveyed and intended so to be conveyed, as if the said deed, or the record thereof as aforesaid, were herein written at length.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

105 To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has caused its corporate name to be hereunto affixed and its corporate seal to be hereunto attached by its president and secretary, and done at office the day and year first above written.

ALGODONES LAND COMPANY,  
By ELISHA M. SANFORD, *President.*

[SEAL.]

Attest:

J. H. CARPENTER,  
*Secretary.*

TERRITORY OF ARIZONA,  
*County of Yuma, ss:*

Before me, Charles H. Brinley, as clerk of the district court of the third judicial district, sitting in and for said county of Yuma, on the day personally appeared Elisha M. Sanford, known to me to be the president of the Algodones Land Company, and the person whose name is subscribed to the foregoing instrument, *a* and acknowledged to me that he executed the same for the purpose *ad* and consideration therein expressed.

Given under my hand and seal of office, at office, this the twenty-first day of September, A. D. 1892.

[SEAL.]

C. H. BRINLEY,  
*Clerk District Court, 3rd Jud. Dist. Arizona,*  
*in and for Yuma County.*

106 Recorded at the request of J. H. Carpenter September 24th, 1892,  
at 11 o'clock a. m.

J. L. REDONDO,  
*County Recorder.*

TERRITORY OF ARIZONA,  
*County of Yuma, ss:*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing *id* a true and cor-



rect copy of a deed from the Algoones Land Company to Earl B. Coe, as the same appears of record in my office in book (8) eight of deeds, at page # 90 et seq. records of Yuma County, A. T.

Witness my hand and seal of office this 25th day of November, A. D. 1892.

[SEAL.]

J. L. REDONDO,  
County Recorder, Yuma County, A. T.

Which said deed bears the following endorsements: F. No. 21. Certified copy deed. Algodones Land Company to Earl B. Coe. Dated Sept. 21st, 1892. Ex. K. Filed Oct. 18, 1892.

107 James H. Reeder, clerk. I. L. Chaves, deputy clerk.

Mr. STEVENSON: Now offer in evidence a certified and authenticated copy of a patent issued by the Government of the United States to A. J. Finley, as mayor to the town of Yuma, for the benefit of the inhabitants of the town, to certain of the lands granted to Rodriguez. Petitioner's Exhibit L.

#### EXHIBIT L.

Which said exhibit is in the words and figures following, to wit:

The United States of America. Certificate No. 63.

*To all to whom these presents shall come, greeting:*

Whereas, A. J. Finley, mayor of the town of Yuma, Yuma County, Arizona Territory, in trust for the several use and benefit of the inhabitants of the town of Yuma, in said county and Territory, according to their respective interest, by virtue of the act of March 2nd, 1867, entitled an act for the relief of the inhabitants of cities and towns upon the public lands," has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Florence, Arizona Territory, whereby it appears that full payment has been made by the said

108 A. J. Finley, mayor as aforesaid, in trust as aforesaid, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for fractional section twenty-six, the lots numbered one, two, and three, of section thirty-five, the lots numbered one, two, three, and four, of section twenty-seven, in township sixteen south, of range twenty-two, East San Bernardino meridian, and the fractional section twenty-one. The lots numbered four, five, six, eight, and nine, and the southwest quarter of section twenty-two, in township eight south, of range twenty-three west, Gila and Sal River meridian, in the district of land subject to sale at Florence, Arizona Territory, containing one thousand two hundred and eight acres and thirty-seven hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tracts have been purchased by the said A. J. Finley, mayor, as aforesaid, in trust, as aforesaid.

Now, know ye: That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress, in such cases made and provided, have given and granted, and by these presents do give and grant, unto the said A. J. Finley, mayor, as aforesaid, in trust as aforesaid, and to his successors, the said tract above described.

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said A. J. Finley, mayor, as aforesaid, in trust as aforesaid, and to his successors and assigns in trust as aforesaid.

No title shall be hereby acquired to any mine of gold, silver, can' aber, or copper, or to any valid mining claim or possession held under existing laws of Congress. This patent shall not affect any valid adverse right to said lands or any part thereof, if such exists under any Spanish or Mexican grant, which may hereafter be confirmed pursuant to act of Congress, and to and assigns in trust as aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

[U. S. A. L. S. L. O.]

Given under my hand at the city of Washington, the second day of August, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

By the President :

U. S. GRANT.

By D. D. COUD,

*Secretary.*

L. K. Lippencott, recorder of the General Land Office, recorded this 6th day of June A. D. 1876, at 9 o'clock a. m., at request of A. J. Finley.

110

O. F. TOWNSEND,  
*County Recorder.*

Miscellaneous Records, vol. 5, pages 72 & 73.

TERRITORY OF ARIZONA,

*County of Yuma, ss :*

I, J. L. Redondo, county recorder, in and for Yuma County, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of patent from the United States of village of Yuma as the same appears of record in my office in book 2 of deeds, page #66 et. seq.

Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements: F. No. 6. Ex. L. Patent from United States to A. J. Finley, mayor town of Yuma. Dated August 2nd, 1875. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy. Refiled Oct. 18, 1892. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

111 Mr. STEVENSON. Deed dated 30th of January, 1892, made by E. M. Sanford and Francis L. Sanford, his wife, to the incorporated authorities of the town of Yuma. (Petitioner's Exhibit M.)

## EXHIBIT M.

Which said exhibit is in the words and figures following, to wit:

This deed, made this thirtieth day of January, A. D. 1892, between Elisha M. Sanford and Francis L. Sanford, as his wife, of Prescott, Arizona, the parties of the first part, and Abe Frank, as the mayor of the village of Yuma, county of Yuma, Territory of Arizona, and his successors in office, as trustee, in trust for the use and benefit of the occupants of the town site of Yuma, the party of the second part.

Witnesseth: That the said parties of the first part for and in consideration of the sum of one dollar, lawful money of the United States, to the said parties of the first part, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and confessed, have remised, released, sold, quitclaimed, and confirmed, and by these presents do remise, release, sell, quitclaim, and confirm unto the said party of the second part, as such trustee, and in trust as aforesaid, and to his successors in trust, and assigns forever, all the right, title, interest, claim, and

112 demand which the said parties of the first part have in and to the following described property, situate in the village of Yuma, aforesaid, to wit:

All that certain tract of land lying wholly within the boundaries of said town site as set forth and described in a certain indenture of patent issued by and on behalf of the United States of America, under and by virtue of the laws of Congress relating to town-site entries, to the mayor of said village in trust for the use and benefit of the occupants of said town site. Which said patent is on file and of record in the office of the county recorder of said county of Yuma, to which said patent and the record thereof as aforesaid reference is hereby thereunto had and made for a more definite and certain description of the property herein intended to be conveyed, nevertheless the grantors herein expressly save, reserve, and except from the conveyance so much and more of the said embraced within said town site as was before the date of said patent set apart and pretended to be reserved by the Government of the United States for its own use.

And further saving, reserving, and excepting from this conveyance those certain other lands bounded and described as follows: A strip of land used and occupied by the Yuma Pumping Irrigation Company for its right of way and station grounds, for its pumping station and canal, and being one hundred (100) feet wide along the river front and twenty-five (25) 113 feet wide on either side of the center of the canal as now constructed, together with strips of land fifteen (15) feet wide extending from said main ditch along the pretended streets and alleys of said town site under and below said canal.

And further saving, reserving, and excepting from this conveyance a certain other strip of land, covering all that certain ground lying on the Colorado River front between the reservoir site of the Southern Pacific Company and the right of way and station grounds of the Yuma Pump-

ing Irrigation Company, thence in a southerly direction until the same passes out of and beyond the boundaries of said town site, and being four hundred (400) feet wide after the same passes beyond the said reservoir site and station grounds.

To have and to hold the same, together with all and singular the appurtenances and preveleges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or in equity, as well as all dower rights at law or in expectancy, of the said Francis L. Sanford, wife as aforesaid, to the said party of the second part, his successors in office, and assigns forever.

In witness whereof the said parties of the first part have hereunto set thier hands and seals the day and year first above written.

114

ELISHA M. SANFORD. [SEAL.]  
FRANCIS L. SANFORD. [SEAL.]

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

Before me, Charles H. Brinley, a clerk of the district court in and for said county and Territory, personally appeared Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 23rd day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,  
*Clerk of the District Court in and for the County of Yuma,  
Territory of Arizona.*

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

Before me, Charles H. Brinley, a clerk of the district court in and for said county and Territory of Arizona, on this day personally appeared Francis L. Sanford, wife of Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and  
115 having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Francis L. Sanford, acknowledged said instrument to be her act and deed and declared that she had willingly signed the same, for the purposes and consideration therein expressed, and that she did not wish to retract the same.

Given under my hand and seal of office this 23rd day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,  
*Clerk District Court, Yuma County, Arizona.*

Recorded at request of A. Frank, February 23d, 1892, at 1 p. m.

J. L. REDONDO,  
*County Recorder.*

TERRITORY OF ARIZONA,

*County of Yuma, ss:*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and cor-

rect copy of deed from Elisha M. Sanford and Francis L. Sanford to the village of Yuma, as the same appears of record in my office in book 7 of deeds, page #525 et. seq.

Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

116 Which said deed bears the following endorsemen's: 21. Filed June 6th, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Ex. M. Refiled Oct. 18, '92. James H. Reeder, clerk. I. L. Chaves, deputy clerk.

Mr. STEVENSON. Deed dated on 30th of January, 1892, by E. M. Sanford and Francis L. Sanford, his wife, to the Algodones Land Company for the land involved in this action; made for the purpose of correcting former deed. (Petitioners' Exhibit N.)

#### EXHIBIT N.

Which said exhibit is in the words and figures following, to wit:

This deed, made 'his thirtieth day of January, in the year of our Lord one thousand eight hundred and ninety-two, between Elisha M. Sanford and Francis L. Sanford, as his wife, of Prescott, Arizona, the parties of the first part, and the Algodones Land Company, erected and organized under and by virtue of the laws of the Territory of Arizona, the party of the second part,

117 Witnesseth: That the said parties of the first part, for and in consideration of the sale, issuance, transfer, and delivery by the said party of the second part to the said Elisha M. Sanford of all and every of the shares of full paid up nonassessable shares of the second part, excepting five (5) shares thereof, the receipt whereof is hereby confessed and acknowledged, have remised, released, sold, quitclaimed, and confirmed, and by these presents does sell, remise, release, quitclaim, and confirm unto the said party of the second part and to its successors and assigns forever all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following described property, situate, lying, and being in the county of Yuma, Territory of Arizona, namely, the Rancho El Paso de los Algodones land grant, more particularly described in a certain deed bearing date the twenty-fifth (25th) day of January, 1892, wherein the Colorado Commercial and Land Company is grantor and said Elisha M. Sanford is grantee, now of record in the office of the county recorder of the county of Yuma, in the Territory of Arizona, to which deed and the record thereof, as aforesaid, reference is hereby hereunto had and made for a more certain and definite description of the land and property herein conveyed, and intended so to be, as if the said deed or record thereof as aforesaid were herein written at length, expressly excepting, saving, and reserving from this conveyance so much and no more of said Rancho El Paso de los Algodones as

lies wholly within the boundaries of that tract of land  
118 bounded and described in a certain town-site patent from the United States of America to the mayor of the village of Yuma, in said county of Yuma, in trust for the use and benefit of the occupants thereof, to wit: Of said town site and not included within any purported reservation of the United States aforesaid for its use; which said patent is

recorded in the office of the county recorder, and to which said patent and the record thereof, as aforesaid, reference is hereby hereunto had and made for a more definite and certain description of the property reserved from this conveyance, and intended so to be, as if said patent or the record thereof, as aforesaid, was herein written at length, and which said property so reserved, excepted, and saved from this conveyance, as aforesaid, was heretofore on this day conveyed by the grantors herein to the mayor of the village of Yuma, aforesaid, and successors in trust for the use and benefit of the occupants of said town site.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, including all right of dower of the said Francis L. Sanford, as such wife, either in law or equity, to the only proper use, benefit, and behalf of the said party of the second part, its successors and assigns forever.

119 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ELISHA M. SANFORD. [SEAL.]

FRANCIS L. SANFORD. [SEAL.]

#### STATE OF COLORADO,

##### *County of Arapahoe ss:*

Before me, Samuel L. Carpenter, a notary public in and for said county and State, on this day personally appeared Elisha M. Sanford, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this first day of February, A. D. 1892.

[SEAL.]

SAMUEL L. CARPENTER,

*Notary Public in and for the County of Arapahoe, State of Colorado.*

#### TERRITORY OF ARIZONA, *County of Yuma, ss:*

Before me, C. H. Brinley, clerk of the district court in and for said county and Territory, on this day personally appeared Francis L. Sanford, wife of Elisha M. Sanford, known to me to be the person whose

120 name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Francis L. Sanford, acknowledged said instrument to be her act and deed, and declared that she willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract the same.

Given under my hand and seal of office this the twenty-third day of February, A. D. 1892.

[SEAL.]

C. H. BRINLEY,

*Clerk District Court in and for the County of Yuma,*

*Territory of Arizona.*

Recorded at the request of E. M. Sanford, February 23rd, 1892, at 2 p. m.

J. L. REDONDO,

*County Recorder.*



## TERRITORY OF ARIZONA,

*County of Yuma, ss :*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of the deed from Elisha M. Sanford and Francis L. Sanford to the Algodones Land Company, as the same appears of record in my office in book 7 of deeds, page #529 et seq.

121 Witness my hand and seal of office this 26th day of May, A. D. 1892.

[SEAL.]

J. L. REDONDO,

*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements: 2. Filed June 6, 1892. James H. Reeder, clerk. By Thos. B. Baldwin, deputy clerk. Ex. N. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

Mr. STEVENSON. Offer deed dated 7th of June, 1892, made by the Algodones Land Company to Earl B. Coe, for the grant involved in this case. (Petitioner's Exhibit O.)

## EXHIBIT O.

Which said exhibit is in the words and figures following, to wit:

122 This deed made this seventh day of June, in the year of our Lord one thousand eight hundred and ninety-two, between the Algodones Land Company, a corporation existing under and by virtue of the laws of the Territory of Arizona, of the first part, and Earl B. Coe, of the county of Arapahoe and State of Colorado, of the second part,

Witnesseth, that the said party of the first part for and on consideration of the sum of ten thousand dollars, and other good and valuable consideration to the said party of the first part in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirmed unto the said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land situate and being in the county of Yuma, and Territory of Arizona, to wit: Sections twenty (22), twenty-three (23), twenty-four (24) in township eight (8) south, range twenty-four (24) west, and so much of sections twenty-one (21), twenty-eight (28), and thirty-three (33) as lies east of the Colorado River, and within the Territory of Arizona, all in township eight (8) south, range twenty-four (24) west; all of sections twenty-nine (29) and thirty-two (32) and the west half of section twenty-eight (28), all in township eight (8) south, range twenty-three (23) west. The northwest quarter of section five (5) and the southwest quarter of section seven (7) in township nine south, range twenty-three  
123 (23) west; all of sections eleven (11), ten (10), nine (9), eight (8), seventeen (17), sixteen (16), fifteen (15), fourteen (14), thirteen (13). The northwest quarter ( $\frac{1}{4}$ ) of section twenty-four (24); all sections twenty-three (23), twenty-two (22), twenty-one (21), twenty (20), twenty-nine (29), twenty-eight (28), twenty-seven (27). The north half ( $\frac{1}{2}$ ) and the south-

west quarter ( $\frac{1}{4}$ ) of section twenty-six (26). All of sections thirty-four (34), thirty-three (33), thirty-two (32), thirty-one (31), all in township nine (9) south of range twenty-four (24) west; also so much of sections five (5) and thirty in township nine (9) south, of range twenty-four (24) west as lies east of the Colorado River and within the Territory of Arizona; also so much of sections thirty-five (35) and thirty-six (36) in township nine (9) south, range twenty-five (25) west as lies east of the Colorado River and within the Territory of Arizona. All of sections six (6), five (5), four (4), the northwest quarter of section three (3), the north half ( $\frac{1}{2}$ ) and the southwest quarter of section nine (9) and of sections eight (8), seven (7), eighteen (18), seventeen (17), nineteen (19), thirty (30), and thirty-one (31), the west half of twenty (20), all in township ten (10) south, range twenty-four (24) west. All of sections thirty-six (36), thirty-five (35), twenty-five (25), twenty-four (24), twenty-three (23), and thirteen (13), in township ten (10) south of range twenty-five (25) west; also so much of sections two (2), one (1), twelve (12), fourteen (14), fifteen (15), twenty-two (22), twenty-six (26), twenty-seven (27),  
 124 and thirty-four (34), all in township ten (10) south, range twenty-five (25) west, as lie east of the Colorado River and within the Territory of Arizona; also commencing at the southeast corner of section thirty-one (31), township ten (10) south, range twenty-four (24) west; thence along south to the international boundary line; thence west along said boundary line to the Colorado River; thence up the said main channel of said river to a point west of said southeast corner of said section thirty-one (31); thence east along a westerly prolongation of the south line of said section and place of beginning. Also all fractional sections and tracts of land not herein especially enumerated, fronting upon and lying along the left or eastern bank of the Colorado River between boundary line of the United States and the Republic of Mexico, at the confluence of the Gila and Colorado rivers, and being west of the Gila and Salt river base and meridian.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appurtenant and the reversion and reversions, remainder and remainder, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances unto the said party of the second part, his heirs and assigns forever.

125 And the said Algodone's Land Company, party of the first part, for itself, its successors and assigns, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of ensealing and delivery of these presents it is well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in the manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of whatever kind or nature soever, and the above-bargained premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns, against all and every

person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and defend.

In witness whereof, the said party of the first part has caused its name to be by its president signed to these presents and its corporate seal attached to the same the day and year above written.

[SEAL.]

ALGODONES LAND COMPANY,  
By EDWARD L. FREEMAN, [SEAL.]  
*Its President.*

Attest :

J. H. CARPENTER,  
*Secretary.*

126 STATE OF COLORADO,  
*Arapahoe County, ss :*

Edward L. Freeman appeared before me this fourth day of August, 1892, in person and acknowledged the foregoing instrument to be his act and deed for the uses specified therein, and said Edward L. Freeman, personally known to me, and known to me to be the president of the Algodones Land Company, and he acknowledged the foregoing instrument to be the free and voluntary act of said company for the uses specified therein.

Witness my hand and official seal. My commission expires June 15th, 1896.

[SEAL.]

WILL. M. DESCH,  
*Notary Public in and for said County.*

Recorded at the request of J. H. Carpenter, September 22nd, 1892, at 4 o'clock p. m.

J. L. REDONDO,  
*County Recorder.*

TERRITORY OF ARIZONA,  
*County of Yuma, ss :*

I, J. L. Redondo, county recorder in and for the county of Yuma, Territory of Arizona, do hereby certify that the foregoing is a true and correct copy of a deed from the Algodones Land Company to Earl B.

127 Coe, as the same appears of record in my office in book # 8 of deeds, at page # 85 et seq., records of Yuma County, A. T.

Witness my hand and seal of office this 25th day of November, A. D. 1892.

[SEAL.]

J. L. REDONDO,  
*County Recorder, Yuma County, A. T.*

Which said deed bears the following endorsements : Certified copy deed. Algodones Land Company to Earl B. Coe. Dated June 7th, 1892. Ex. O. Filed Oct. 18, '92. James H. Reeder, clerk. I. L. Chaves, deputy clerk.

Mr. STEVENSON. I offer in evidence the deposition of Juan A. Robinson, taken before Theodore Wagner, United States surveyor-general for California, on the 7th of April, 1880, and filed in the office of the surveyor-general of the Territory of Arizona, heretofore, to wit, on the 12th day of April, 1880. It is offered now for the reason that the person who gave this testimony is now dead. (Petitioner's Exhibit P.)

## EXHIBIT P.

128 Which said exhibit is in the words and figures following, to wit :  
Attached to and properly a part of said exhibit is the following communication, to wit :

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., March 4th, 1880.*

JOHN WASSON, Esq.,

*U. S. Surveyor-General, Tucson, Arizona :*

SIR : At the instance of L. Aldrich, esq., of San Francisco, California, as attorney for claimants in the matter of "Paso de los Algodones," private land claim in Arizona, you addressed a letter to this office on 9th of December last, in which you desire instructions upon the following questions, arising in the adjudication by you of the title to said claim, viz :

"Is it proper for me to permit the examination of witnesses in private land claims to take place out of this office, and out of the presence of myself or a sworn officer of this office, and then receive and act upon such testimony ?

"2. If yes, then under what conditions and before whom may such testimony be taken ?"

129 In reply, you are informed that while the law makes it your duty to take the testimony in all private land claims in the Territory of Arizona, adjudicated by you, it was not contemplated that you should travel to all parts of the country for that purpose. By the authority given you to summons witnesses, it was undoubtedly intended that they should be brought to your office to give their testimony. In the case, however, which has been especially brought to the notice of this office, where it is essential to have the testimony of a person residing in California, who is old and infirm, and therefore incapacitated to make the journey to Tucson, I think that it would be permissible to have the testimony of such person taken before the surveyor-general of California.

It is suggested that the attorneys should first present to you, in writing, all the questions which they propose to ask the witness, and you can then determine upon such questions as you may deem necessary to submit on cross-examination, and they should also be reduced to writing, after which the interrogatories and cross-interrogatories may be sent to the surveyor-general of California, who will take the testimony.

He should also be authorized to ask such questions as he may think proper to determine the truth or falsity of the statements of the witness, and after the examination is concluded, the testimony should be properly certified, inclosed under seal, and transmitted to you.

Respectfully,

130

J. M. ARMSTRONG,  
*Acting Commissioner.*

Which said communication bears the following endorsements :  
A true copy.

JOHN WASSON,  
*U. S. Surveyor-Gen'l for Arizona.*

Which said Exhibit P is as follows :

Before the surveyor-general of the United States for the Territory of Arizona, in the matter of the petition of the Colorado Commercial and Land Company for a survey of and confirmation of title to the tract of land in the Territory of Arizona known as the Rancho El Paso de los Algodones, granted to Fernando Rodriguez by the Government of the Republic of Mexico, on or about the 12th day of April, 1838, and the title to which has passed by due mesne conveyances to petitioner, San Francisco, March 30, 1880.

*Deposition of Juan A. Robinson, taken before Surveyor-General T. Wagner.*

**The SURVEYOR-GENERAL :**

Interrogatory 1st. What is your name, age, residence, and occupation ?

Ans. My name is Juan A. Robinson ; age, 78 years ; my business  
131 is that of a general agent ; I reside in San Francisco.

Interrogatory 2nd. Did you ever reside in the Republic of Mexico ? If yes, where, in what State, and how long ?

Ans. I resided in the Republic of Mexico, in the State of Sonora, for 40 years continuously, up to 1861 and from 1861, occasionally, to 1869.

Interrogatory 3rd. If you answer the last interrogatory in the affirmative as to your residence in said Republic, state if at any time during your residence there you occupied any official position there, what said position was, and how long you occupied it.

Ans. I held the office of U. S. consul for the Port of Guaymas for over ten years under commission from President Tyler and President Polk.

Ques. Can you particularize during what years you held that position ?

Ans. I can particularize by reference. I do not remember just now. My appointment under President Tyler is dated September, 1842, and under President Polk, July, 1848 ; I continued in the office 1848, 1849, until the year 1850 or 1851, when I was relieved by Consul Roman.

Interrogatory 4th. Have you read the petition which has been filed in the office of the surveyor-general of the United States for the  
132 Territory of Arizona for the confirmation of and the issuing of a patent to said company for a grant made to one Fernando Rodriguez for a tract of land in said territory known as the Rancho El Paso de los Algodones, a printed copy of which is now shown you, and hereto annexed, marked Exhibit A ? [Which said Exhibit A will follow this deposition.—Clerk.] If yes, state if you knew Fernando Rodriguez therein mentioned.

Ans. I have read the petition referred to in this interrogatory. I was personally acquainted with Fernando Rodriguez referred to in said petition. I knew him from the year 1853 until his death.

Ques. He was the same person mentioned in this petition, was he not ?

A. Yes.

Interrogatory 5th. If you knew said Rodriguez, state when and how long you knew him. State also if you knew anything of a grant to him by the Mexican Government on or about the 12th of April, 1838, or at any other time, of a tract of land in the State of Sonora, in Mexico, now in the Territory of Arizona.

Ans. I knew Fernando Rodriguez in Hermosillo, in Sonora, and in the port of Guaymas. I knew him since the year 1853 until his death. I was aware of his application to the Sonora authorities in the early part of 1838 for the purpose of a tract of land on the margin of the Colorado River, and at that date being in the State of Sonora, Mexico, but now in the Territory of Arizona.

133 Ques. And that was on or about the 12th or 13th day of April, 1838?

Ans. Early in 1838.

Interrogatory 6th. What were your relations with said Rodriguez—intimate, friendly, or otherwise?

Ans. My relations with Fernando Rodriguez were of the most intimate and friendly nature.

Interrogatory 7th. Is said Rodriguez alive at present; if not, when did he die?

Ans. Mr. Fernando Rodriguez is not alive; he died, I think, about the year 1865. I could not say the exact date at this moment.

Ques. Where did he die?

Ans. He died in Hermosillo.

Interrogatory 8th. Describe generally the land granted to him, above mentioned, by name and location.

Ans. The land purchased by Fernando Rodriguez from the authorities of Sonora, in the early part of 1838, is situated at the junction of the Gila River with the Colorado River. It has the figure of a large horseshoe, the river Colorado serving as a boundary on the northern, western, and southern sides, vacant lands of Arizona Territory lying to the east, and is known as the El Paso de los Algodones, the name taken from that of an old ford over the the Colorado River at the southeastern extremity of the measurement of the property.

134 Ques. Can you give about the extent of the property—how much land there was at the same time?

Ans. I know it was made for five leagues.

Ques. Five square leagues?

Ans. Yes; what they call sitios in Spanish.

Interrogatory 9th. Did you purchase the land so granted from Rodriguez? If so, when?

Ans. Fernando Rodriguez sold me the Ranch Paso de los Algodones in exchange for dry goods from my commercial house in Guaymas in 1847, he at that time living at Hermosillo and I in the Port of Guaymas; and having every confidence in his integrity, I did not exact from him the execution of the deed in my favor at that time.

Interrogatory 10th. Did you ever receive any deed or conveyance of said land from Rodriguez? If not, why?

Ans. As I said in my foregoing answer, Fernando Rodriguez did not execute a deed, for the reasons therein mentioned.

Interrogatory 11th. Do you know who, on the 18th day of October, 1873, were the sole heirs and successors of the said Rodriguez to the title of said land? If so, state their names; and if any were married, the name or names of the husband or wife of each, and particularly your means of knowledge on this subject.



Ans. Subsequent to the decease of Fernando Rodriguez I called  
 135 on his heirs to arrange his account, and to give me a deed for the  
 Paso de los Algodones, which they consented to do and did execute  
 said deed on the 18th of October, 1873, said deed being signed by  
 his widow, Maria Antonio Aguila de Rodriguez; his three sons, Fernando  
 Rodriguez, Joaquin Rodriguez, and Francisco Rodriguez; and his four  
 daughters, M. Antonia Rodriguez, Adilaida Rodriguez and her husband  
 Carlos E. Hale; Carmen Rodriguez and her husband, Wincleslan Yberri;  
 and Amalia Rodriguez and her husband, Juan P. Moller. I knew personally  
 the widow and her children, as I also do the husbands of the married  
 daughters, Mr. Hale being an American citizen, Mr. Yberri a Mexican  
 gentleman, and Mr. Moller a German gentleman—Mr. Yberri and  
 Mr. Moller residing in Guaymas and Mr. Hale in Hermosillo, where I  
 often met him, as well as at Guaymas, where he came frequently on business.  
 I was intimately acquainted with the whole of them.

Ques. That was your means of knowing? You were intimate? You  
 had occasion to know for the reason that you wanted to straighten this  
 matter out?

Ans. Yes.

Interrogatory 12th. If you say that you purchased said land from  
 Rodriguez, state if he handed over to you, or put into your possession at  
 the time, what he represented to be the original grant and accompanying  
 papers which he received from the Mexican Government for said land.

If so, what did he represent them to be?

136 Ans. Fernando Rodriguez handed me the "Expediente" or original  
 title deed obtained from the Sonora authorities at the time  
 of selling me the property, and I held said document and other important  
 papers until I disposed of the property El Paso de los Algodones to the  
 Colorado Commercial and Land Company in 1874. Fernando Rodriguez  
 assured me that the original papers were gotten up in due conformity with  
 the Mexican laws, and that they were full titles and covered in every  
 respect the Ranch El Paso de los Algodones.

Interrogatory 13th. How long have you had said papers, and what, if  
 any, disposition has been made of them?

Ans. I received the original documents "Expediente Original" from  
 Fernando Rodriguez in 1847, remaining in my possession and power until  
 1874, when I delivered them to the Colorado Commercial and Land Company  
 with the deed which I gave that company for the property.

Interrogatory 14th. Did you ever go into possession, occupy, or cultivate  
 said land? If so, state what you did in that respect and when said  
 possession, occupation, and cultivation occurred; and if you did not, state  
 why.

Ans. On account of the danger arising from the barbarous Apache  
 Indians, I found it quite impossible to take possession of the property,  
 although I made liberal inducements to different parties to go there,  
 137 and only succeeded by offering handsome compensation to the settlers  
 who supplied the United States military stations in Arizona  
 and southern California to locate their establishments on the property,  
 and by that means a nucleus was formed for the present town of Yuma,  
 which has been gradually increasing to the present date. I never went  
 into possession. The settlers took possession in my stead.

Ques. You only went into possession by some settlers whom you procured to put on improvements?

Ans. I made it a consideration for them to go there. I gave them a part of the property. I would rather not say any more than I know they went there and held the property.

Ques. When did possession, occupation, and cultivation occur?

Ans. I am aware that Fernando Rodriguez made several attempts to occupy the Ranch El Paso de los Algodones before selling the property to me, sending bodies of vagueros well armed, but they were invariably driven back. He had collected a quantity of horned cattle, horses, and mares, hoping to establish a cattle-breeding ranch on El Paso de los Algodones, but had to abandon these attempts for reason of the hostile Indians. I took possession of these lands soon after the Gadsden purchase, and soon after troops were sent there, and held them up to the time I sold to the Colorado Commercial and Land Company. The very moment that the troops went there, then these settlers took possession in my name and have remained there since.

138 Ques. When did this occupation or cultivation occur; about what time?

Ans. Shortly after the Gadsden purchase. I don't remember the date. It was in 1854.

Interrogatory 15th. State any other matter or thing you may know of interest or benefit to either party in this case or which may tend to throw any light on the merits of the petition therein, as fully as though you had been particularly interrogated thereto?

Ques. I know of nothing further.

Cross-interrogatories, to be propounded to Juan A. Robinson, a resident of the city and county of San Francisco, in the State of California, on behalf of said petitioner.

1st. Cross-interrogatory. State, if you know, the condition of the country in the neighborhood of the junction of the Colorado and Gila rivers, about the 12th of April, 1838, with relation to hostile Indian tribes. Was its condition such as to permit its occupation by the agriculturist or grazier?

Ans. The country on which it located El Paso de los Algodones was considered, at the time Fernando Rodriguez made the purchase from the Mexican authorities in Sonora, of great importance on account of its geographical position, the junction with the River Gila being at that time considered the head of navigation from the Gulf of California,

139 and the probability of that place becoming a central point for the export of the ore and metal of the mines in that vicinity, which in those days were reported as fabulously rich, and as a grazing and cattle-raising ranch it had many advantages. The greater part of the grant being surrounded by the Colorado River, facilitated greatly the herding of the cattle, thus obviating the employment of a great number of "vagneros" (herdsmen) in the care of the cattle; for grazing the grass was abundant and nutritious, more particularly the grama grass, which, having heavy roots, was less affected by the drought and want of rain than other classes. The bean of the mesquite, of which the cattle are very fond, is most abundant in the dry seasons, and the beeves fatten readily on them. On the margin of the river the bottom land is very rich and appropriate for

the raising of sugar cane, tobacco, and cotton, and other semitropical plants. Indian corn, beans, and pumpkins can be grown to great advantage, whereas a part of the bottom land, which is annually overflowed, produces hemp spontaneously, each year producing a crop without planting anew. The hostile Indians, at the time the grant was made to Fernando Rodriguez, were constantly on the warpath, and Yumas and the Apaches making it quite impossible for white people, except with a heavy escort of troops, to remain for any time in that vicinity. Various attempts were made by the proprietors, but they were invariably driven back, and several times with the loss of life.

2nd. Cross-interrogatory. What were the circumstances of Fernando Rodriguez, the grantee of "El Paso de los Algodones," in 140 April, 1838, and had he sufficient means at that time to improve and stock a large tract of vacant lands of the country?

Ans. In April, 1838, Fernando Rodriguez was considered a man of large means, who, independent of a large dry-goods store which he kept at Hermosillo, had a cattle ranch a short distance from that city and was also interested in mining pursuits, and was always looked upon as a man well to do.

Ques. And he had stock enough?

Ans. Yes; he was considered very rich. He had a dry-goods store and a stock ranch also, and was interested in mining and was looked on as a man in excellent circumstances.

3rd. Cross-interrogatory. Do you know if Fernando Rodriguez was the owner, by grant of the government, of any other lands within the State of Sonora at the time he obtained the grant of "El Paso de los Algodones?" If yea, please state if you know what lands they were and where located.

Ans. I am not aware that Fernando Rodriguez was the owner of any other grant of land from the government of the State of Sonora at the time he obtained the grant of "El Paso de los Algodones." I don't think he had any other grant.

4th. Cross-interrogatory. Do you know if the grantee, Rodriguez, ever held or attempted to hold any actual possession and useful occupation of the land embraced within the grant of "El Paso de los 141 Algodones?" If yea, give, if you can, the date of such actual or attempted occupation.

Ans. Previous to 1847 Fernando Rodriguez told me that he had fitted out and equipped several bodies of rancheros and vaqueros and dispatched them, well provisioned, for "El Paso de los Algodones," but that neither party ever reached his ranch Paso de los Algodones. They all returned, stating that they had, before reaching the ranch, met large bodies of savages, and that they were afraid to proceed, and much less remain, at the ranch Paso de los Algodones unless they were protected by a sufficient force of regular troops. That was in 1847. It was previous to that time that he made this declaration to me.

Ques. Have you any interest now in this land?

Ans. I have no interest in the property except I hold stock in the company.

Mr. ALDRICH. The company is the petitioner here?

Ans. Yes; I hold stock in the company.

The SURVEYOR-GENERAL. You hold stock in the company that now owns this grant?

Ans. Yes, that now owns this property.

Ques. You are still an interested party in the matter?

Ans. That far I am an interested party.

Ques. Can you tell about what the consideration was which you paid for this land?

142 Ans. I said in the first place I had a dry-goods store and had a wholesale importing store in Guaymas. We had our arrangements. He was anxious to sell me this property and I took it from him, but he never gave me a deed, because I had confidence in him and never thought of it. I never cared about getting a deed; I had the original papers in my hand.

Ques. Do you know about the price that you paid for it?

Ans. About three thousand dollars.

Ques. And he merely delivered to you the original papers and you did not take any deed from him, and after he died you sought out the heirs and obtained this conveyance?

Ans. They were acquainted with this business that I had. We were very intimate at his house and with his family. They knew everything that was going on. After Rodriguez' death I told them I would like to have it cleared up, and they arranged it and gave me the deed as his heirs. They knew it was just the same thing and they did it.

Ques. And this grant covers the present site of the town of Yuma?

Ans. Yes.

Ques. Does it cover also the military reservation there?

Ans. It does not.

Ques. It does not?

Ans. I do not know but what there has always been a question of part  
143 of the reservation, not Fort Yuma, but on the other side of the river. There is a small piece of land there where the troops had barracks. There was a great deal of correspondence about that. Whether the Government holds on to that or not will be decided by the Government.

Ques. I only want to get at what you originally claimed?

Ans. We claimed the whole; but the Government made use of this piece of property. We claim it is ours.

JUAN A. ROBINSON. [RUBRIC.]

Subscribed and sworn to before me this 30th day of March, A. D. 1880.

[SEAL.]

THEO. REICHERT,

U. S. Commissioner.

Att'ched to said deposition is the following certificate, to wit:

Office of the surveyor-general of the United States for the State of California.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

This is to certify that I, Theodore Wagner, surveyor-general of the United States for the State of California, by virtue of the letter of instructions from the Commissioner of the General Land Office of the United

144 States, addressed to the surveyor-general of the United States for the Territory of Arizona, a copy of which has been forwarded by him to me, and is hereto annexed, marked Exhibit B—[which said Exhibit B is so marked and copied in this transcript, at the beginning of and as a part of this Exhibit P, to wit, the deposition of Juan A. Robinson, clerk]—did cause the witness, Juan A. Robinson, to appear before me for examination in the matter of the petition hereinbefore mentioned, on the 30th day of March, 1880, and that he was first duly sworn to speak the truth, the whole truth, and nothing but the truth, in the matter of the said petition, and in answer to the foregoing interrogatories and cross-interrogatories to be propounded to him, and such other interrogatories or questions as might be propounded to him, and that the answers to such interrogatories, cross-interrogatories, and questions, which appear above, are his true answers thereto; and I further certify that I caused the said answers to be reduced to writing, and after being so reduced to be carefully read to him, and that he was informed that if he desired to correct the same in any particular he had the privilege of going so before signing the same, and that he replied that he had no desire to correct the same, and thereupon signed the said deposition with his own proper and genuine signature.

In witness whereof I hereunto sign my name officially and cause my seal of office to be affixed this seventh day of April, 1880.

[SEAL.]

THEO. WAGNER,

145

*U. S. Surveyor-General for District of California.*

The petition referred to in interrogatory four (4 of the foregoing deposition, and annexed as Exhibit A of the same, is in the words and figures following to wit :

EXHIBIT A (of the foregoing deposition).

*To John Wasson, esq., Surveyor-General of the United States for the Territory of Arizona :*

The petition of the Colorado Commercial and Land Company respectfully represents that your petitioner is a corporation which was organized on the seventh day October, 1873, under the laws of the State of California, and is now existing under the laws of said State, having its principal place of business in the city and county of San Francisco, in said State. That the object for which said corporation was formed was and is to carry on and conduct the business of dealing in real estate and extraction of precious metals in the Territory of Arizona and the State of Sonora in Mexico, as will more fully appear by the certificate of the secretary of state of the State of California, under his hand and under the seal of said State, marked Exhibit A, which is herewith filed, and is hereby referred to to establish the facts of the organization of the said corporation and the object thereof.

146 2d. Your petitioner further represents that on the fourth day of January, A. D. 1838, Fernando Rodriguez, a resident of the city of Hermosillo, in the State of Sonora, in the Republic of Mexico, and a citizen of said State and Republic, presented his application to Jose Justo Milla, proprietary auditor of said State of Sonora, who then held said

office under the laws of said Republic for the registry, valuation, measurement, and purchase of certain vacant land in the said State of Sonora, embracing five (5) square leagues, more or less, which land is hereinafter particularly described. That said land and the revenue to be derived therefrom had been, prior to said application, by various decrees and laws of said Republic, in force at the time of said application, and of the purchase and grant to him of the same, as herein mentioned, conceded and set apart by the said Republic to the said State of Sonora and was at those times the property of that State.

3d. Your petitioner further represents that on the twelfth day of January, A. D. 1838, the said Rodriguez was permitted by the said proprietary auditor to register said land, and thereafter, such proceedings were had in accordance with the laws, decrees, and regulations of the said Republic and of the said State of Sonora governing said application in respect thereto; that said land was purchased from the said State of Sonora by said Rodriguez, and the purchase money therefor was duly paid by him into the treasury of the State of Sonora, and the said land was duly measured off to him; and on the twelfth day of April, A. D. 1838,

147 the said land was granted to the said Rodriguez, by due authority, in the name and in behalf of the said State of Sonora and of the said Republic; and he became, and was thereby, on the said twelfth day of April, A. D. 1838, invested with a perfect title in fee thereto, as will more fully appear by the documents in Spanish marked B, 1, 2, 3, 4, and 5, and the translations thereof marked Exhibit C, 1 and 2 herewith filed and hereby referred to.

(Which said documents are incorporated in this transcript, as petitioner's Exhibit's B, C, D, E, and F, respectively.—Clerk.)

4th. Petitioner further represents, that after the aforesaid purchase by the said Rodriguez of the said land, to wit, on or about the day of , A. D. 1845, Juan A. Robinson, then a resident of the port of Guaymas, in said State of Sonora, purchased the said land from the said Rodriguez, but did not at the time take or receive, nor has he at any time taken or received from him any deed, conveyance, or other written evidence of title to said land, and that on or about the day of , A. D. 1865, the said Rodriguez died.

5th. Petitioner further represents, that on the 30th day of December, A. D. 1853, by a treaty between the Republic of Mexico and the United States, the sovereignty over a portion of the State of Sonora, embracing the land above described, was ceded by the Republic of Mexico to  
148 the United States, and the said land is now in the Territory of Arizona.

6th. Petitioner further represents, that the said Rodriguez left a widow, viz: Maria Antonia Aguilar de Rodriguez, and seven children, viz, sons: Fernando Rodriguez, Joaquin Rodriguez, Francisco Rodriguez; and daughters, Antonia Rodriguez, Adelaida Rodriguez, Carmen Rodriguez, and Amelia Rodriguez, all residents of the State of Sonora, in the said Republic; that his daughter Adelaida married Carlos E. Hale; his daughter Carmen married Wincelao Yberri, and his daughter Amelia married J. N. Moller. That the said widow and children were the sole heirs and successors of the title of the said Fernando Rodriguez, and were at the time of the conveyance by them to said Robinson, hereinafter mentioned, his sole heirs and successors to the said title.



7th. Your petitioner further represents that the said heirs and successors and the husbands of the daughters married as aforesaid, having been well satisfied at the time of the conveyance to the said Robinson, hereinafter mentioned, of the purchase by him as aforesaid, on the 18th day of October, 1873, executed and delivered to said Robinson a deed in pursuance of his purchase as aforesaid, conveying to said Robinson the title of each in and to the said land, as will appeared more fully by the deed filed herewith marked Exhibit D, and hereby referred to.

(Which said deed is incorporated in this transcript, as petitioner's Exhibit G.—Clerk.)

149 8th. Your petitioner further represents that on the 29th day of November, A. D. 1873, the said Robinson duly conveyed said lands to your petitioner, as appears by the deed herewith filed, marked Exhibit E, and hereby referred to.

(Which said deed is incorporated in this transcript, as petitioner's Exhibit H.—Clerk.)

9th. Petitioner further represents, that the said land granted as aforesaid, is described as follows: Five (5) square leagues, more or less, of vacant land in the Territory of Arizona, contiguous to the Gila and Colorado rivers, situated in front of the confluence of the same, as also opposite to a point named El Paso de los Algodones, on said Colorado River; commencing at a point on the southern side of the river Gila, in front of the confluence of the same with the Colorado River, and running from thence in a southwesterly direction to a point on the said Colorado River, at the ford or pass known as Paso de los Algodones, or the Algodones Ford; thence up and along the meanderings of said Colorado River to the place of beginning, being the same land which was measured off to the said Fernando Rodriguez, as appears by the measurements thereof made on or about the 4th of February, A. D. 1838, the descriptive notes and topographical plan, of which are contained in documents marked Exhibits B and C, herewith filed; a map or plat of survey of said land made by the Samuel Purdy, jun., esq., at the instance of the petitioner, is also filed herewith and referred to, marked Exhibit G, showing the extent and

150 boundaries of said land. Petitioner also files herewith and refers to a map of a reconnoissance of the Colorado River, made by order of Major Gen. P. F. Smith by Geo. H. Derby, a lieutenant of the U. S. Topographical Engineers, in December, 1850, marked Exhibit H., for the same purpose of identifying said land.

Petitioner further represents that there are no claims to said land, to the knowledge of your petitioner, in conflict with that of your petitioner. Wherefore your petitioner prays that the said land may be surveyed by the United States, and that the title of your petitioner thereto may be recognized by the United States and confirmed, and that a patent may issue therefor, and that such other proceedings may be taken by the United States or its proper officers as may be just and proper in the premises.

L. ALDRICH,

*Attorney for Petitioner.*

[SEAL.]

LEWIS LILLIE,

*Secretary Colorado C. & L. Co.*

Which said Exhibit P, and attached exhibits, bear the following endorsements, to wit: No. 13. Exhibit P. El Paso de los Algodones. Depo-

sition of Juan A. Robinson in the case. Filed June 2, 1892.  
 151 James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk.  
 Refiled Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves,  
 deputy clerk. Rec'd Tucson, April 12, '80.

Mr. STEVENSON. We offer deposition of Victor Aguilar, M. Campillo, Fernando Mendez, and B. Rochin, taken before Chief-Justice Reed, of this court, at Hermosillo, in the State of Sonora, on the 27th and 28th days of May, 1892, filed in this case on the 6th of June, 1892. Petitioner's Exhibit Q.

### EXHIBIT Q.

Which said exhibit is in the words and figures following, to wit :

#### UNITED STATES OF AMERICA.

In the court of private land claims, Denver, Col., June 4, 1892.

ALGODONES LAND COMPANY (A CORPORATION), PLAINTIFF,	} No. 1.
<i>vs.</i>	
UNITED STATES, DEFENDANT.	

152 *Stipulation.*

It is hereby stipulated and agreed on the part of the plaintiff and defendant that all formalities and requirements as to taking deposition of Victor Aguilar, R. C. Hopkins, M. Campillo, Fernando Mendez, and B. Rochin, taken before Chief-Justice Reed, at the city of Hermosillo, State of Sonora, Mexico, on the 27th and 28' days of May, 1892. are waived and the same may be ready to either party, subject only to such objections as either may see proper to assign to any question as to incompetency and irrelevancy when the same is read or offered to be read in testimony.

E. M. SANFORD,  
 COE & CARPENTER,  
*Attorneys for Plaintiff.*

Filed June 6th, 1892.

MATT. G. REYNOLDS,  
*Attorney for the U. S.*  
 JAMES H. REEDER,  
*Clerk,*

By THOS. B. BALDWIN,  
*Deputy Clerk.*

VICTOR AGUILAR, sworn :

Victor Aguilar is may name; residence, Hermosillo; my occupation is that of State treasurer of State of Sonora. Have held position since 1887. Am the custodian of the archives of this State (witness shown the original expediente of title). It is part of the archives of my office. It is the title of five sitios. The grant El Paso de los Algodones.

153 The grantee named is Fernando Rodriguez. I do not know whether he held any official position in Sonora in 1838. The

position of State treasurer of State of Sonora in 1838 was occupied by Jose Justo Milla. He was acting State treasurer, but was the auditor of the State.

Q. Have you no records in your office that will show who was the treasurer-general of the State of Sonora in April, 1838?

A. No.

Q. The office of auditor of the treasury was different from the office of treasury-general, was it not?

A. Yes, sir.

Q. Can you give me the name of the treasurer-general in 1839?

A. Jose Maria Mendoza.

Q. Can you give me the name of the treasurer-general in 1837?

A. Jose Maria Mendoza and Ignacio Trellez.

Q. State whether or not Rodriguez was a prominent man in Sonora in 1838?

A. Yes, sir; Rodriguez was understood to be a man of wealth in 1838.

Q. Do you know whether or not it was customary to grant large bodies of land to the same individual upon the same day?

A. Yes, sir; more than one grant.

Q. The condition of the grants was either settlement or cultivation as agricultural or grazing lands.

A. I was not familiar with the customs at that time.

154 Q. Do you know whether Jose Justo Milla, from the records in your office, granted to Fernando Rodriguez a grant known as "La Punta del Sargento" on the same day, to wit, April 12, 1838, containing about ten leagues?

A. Yes, sir.

(Witness here shown a record of his office.)

Q. What is that?

A. Toma de razon, or register of the titles of grants of land.

Q. Examine it during the year 1838 and say whether or not there is any record, note, or memorandum of the grant El Paso de los Algodones to Fernando Rodriguez.

A. No record.

Q. Examine it during the same year and say whether or not there is any record memorandum of the La Punta del Sargento grant to Fernando Rodriguez.

A. No record.

(Book shown witness.)

Q. What is that book?

A. Account book kept by the auditor of the treasury.

Q. Who was the officer keeping that book?

A. Jose Justo Milla.

Q. What date or dates does that book cover?

A. From July, 1838, to Jan., 1839. It is part of the archives of my office.

155 Q. Look at page three of the original expediente of title in this case; now look on the reverse side of page 19 of the same expediente of title and give me the difference in spelling the name Milla.

A. On page 3 it reads Jose Justo Milla, and on page 19 it reads Jose Jose Milla.

Q. Do you know whether or not the expedientes of title which were filed in the office of treasurer-general were written by an official of the department?

A. Yes, sir.

Q. Is the same difference existing now as existed in 1838 between the office of State treasurer and auditor?

A. The same exists. Their functions and duties are entirely different.

Cross-examination by E. M. SANFORD, att'y for plff.:

Q. State if the expediente of title in this grant is the original official record?

A. It is.

Q. Are you acquainted with the official signature of Jose Justo Milla, as auditor and acting treasurer-general, during that portion of 1838 when this expediente was formed?

A. I am.

Q. Please look at signature on page 3 of expediente on this case and state in whose handwriting the words Jose Justo Milla appears?

156 A. It is the genuine signature of Jose Justo Milla.

Q. State the same as to page 12.

A. It is Mr. Jose Justo Milla's signature.

Q. State the same as to the reverse side of page 13.

A. It is Jose Justo Milla's signature.

Q. State the same as to reverse side of page 14, on page 15, 17, reverse side of 18, and the last signature on the expediente on the last page.

A. They are all the genuine signatures of Jose Justo Milla.

Q. Examine specially the words Jose Jose Milla, as a signature appearing on the reverse side of page 19 and being next to the last signature on the expediente, and state in whose handwriting that signature appears.

A. In the personal handwriting of Jose Justo Milla.

(Here testimonial filed in the office of surveyor-general of Arizona, U. S. A., and marked No. 3, page 479, vol. 1, journal original title papers, shown witness.)

Q. Please state what this instrument purports to be?

A. It is the title papers in the Algodones grant in question.

Q. Please state upon what date that instrument purports to be executed?

A. The 12th day of April, 1838.

Q. State if you are acquainted with the official seal of the treasurer-general of the State of Sonora in use in the year 1838, at the time that instrument purports to be executed.

157

A. Yes sir.

Q. Please state what seal it is that is attached to these title papers.

A. The seal of the state treasurer of th' State of Sonora, in existence in 1838.

Q. Is that signature of Jose Justo Milla appearing thereon with said seal, and also the one appearing next before Leonardo Escalante, the genuine official signature of Jose Justo Milla as auditor and acting treasurer-general in the year 1838?

A. It is.

Q. State if in 1838 the office of treasurer-general and auditor were distinctive and separate offices, or was not the auditor a subaltern in the office of treasurer-general and next in rank to him.

A. The offices of auditor and treasurer-general were one and the same office, but the office of auditor was inferior to the treasurer-general.

Q. Then in the absence or disability of the treasurer-general in 1838, did not the auditor perform the functions and duties of the office of treasurer-general?

A. Yes, sir.

Q. Please examine page 19 and 19 of the expediente and state  
158 whether or not that is the original record evidencing the payment by Fernando Rodriguez to the proper officers of the State of Sonora of the purchase money for that grant.

A. It is.

Q. What sum was paid by Fernando Rodrigues to the State treasurer for the purchase of that grant?

A. Four hundred dollars purchase money and six dollars costs.

Q. Do you know the official signature of Jose Maria Mendoza, appearing on this paper marked A?

A. I do.

Q. Whose signature is it?

A. Jose Maria Mendoza's signature as treasurer-general in 1841.

Q. Had, on the date of the execution of that instrument, Jose Maria Mendoza authority under the laws or customs of this country to execute it?

A. Yes, sir.

Q. Please examine the paper marked Exhibit B, now shown you, and state if you know the signature thereto; and, if so, whose signatures they are?

A. One is the signature of Juan Jose Encinas as "alcalde secona" of the city of Hermosillo, and the other is the genuine signature of Jose Justo Milla, as auditor and acting treasurer-general.

Q. Please examine Exhibit C, now shown you, and state, if you know, whose signature is attached to the bottom of the instrument; and, if so, whose it is, and in what official capacity did he sign it?

159 A. It is the signature of Jose de Aguilar, as governor of the Stat' of Sonora.

Q. The same question is asked as to Exhibit D.

A. One is Jose Maria Mendoza, and the other is Florencio Trejo, as second official of the treasury, and the other is Ignacio Pesquerra, the then governor of Sonora, and another one is F. Gutierrez, then secretary of state.

Q. Please examine Exhibit E, now shown you, and same question as appearing second before this.

A. The signature is that of Jose Maria Mendoza, the then commissary-general, which approximately same as treasurer-general.

Q. Examine the expediente, and state if the body of it is in different handwriting; and, if so, how many?

A. There are at least four different handwritings.

Q. After the petition, does not the same handwriting appear in many other records of your office between the extreme dates of that instrument?

A. Yes, sir.

Q. Examine the testimonio, and state if that is in the handwriting of any person whose handwriting appears in many other records in your office between the extreme dates of the instrument.

A. Yes, sir ; there is handwriting in this office similar to that.

Q. Are there not a large number of grants ; and, if so, how many in 1838 that were not registered in the toma de razon. ?

160 A. There are some, but I can not give them until I see the records.

Q. Have any of those that have not been registered been legislated upon or recognized by the federal authorities of Mexico ; and if so, how many have been adjudicated upon ?

A. (Erased.)

Q. Then did the mere fact that the grant was not registered in Toma de Razon divest the purchaser of the land ?

(Objection by the United States.)

A. The fact that the entry is not made in the Toma de Razon is not proof that the title is not valid.

Q. Have you any records showing the handwriting of the persons who purport to have written the body of the testimonial in this case ? If so, please exhibit the same here.

A. A number of documents here shown and exhibited were written by the same man who wrote the body of the testimonio of this case.

Q. Do you know of any other grant which in effect were petitioned got to be inhabited as soon as the hostility of the savages was abated ? If so, name the grant.

A. I know of some, but I will have to look at the archives to give the names.

Redirect by REYNOLDS :

Q. Do you know of any petition for a grant which says the party will comply with the conditions imposed by law, or by the granting officer wherever the notorious condition of the country shall permit ?

161

A. I have heard of some but can not tell them precisely. I—

Q. Did you really ever hear of such terms being used in a petition for a grant except in the Algodones case, and the Sargento case ?

A. Yes.

Q. Have you any record in your office showing the purchase money by Rodriguez for the Algodones grant or the Sargento grant ?

A. The entries made in the month of April, 1838, are missing.

Q. Was not the record of the payment of the purchase money for the sale of public lands kept with a good deal of care ?

A. Yes, they were all kept, by the archives of that date are all torn and the records incomplete.

Q. Is there any record, mutilated, or in good order, showing the payment of any money by any person for any grant in the months of February, March, April, May, June, or July, 1838 ?

A. Yes; there are some of those records. We have some here ; they begin July.

Q. Are there any grants on file in your office, except the Algodones grant and the Sargento grants, where there has been no minute or memorandum in the records of the office as to their existence ?

A. I do not know.



Q. I will get you to examine the records of the office to see  
 162 whether any record of the purchase money being paid for the Tusi-  
 bampo grant to one Juan Jose Rodriguez, dated April 10, 1838.  
 Also Juan Pedro del Templo, in favor of Jose Ignacio Garcia, dated April  
 10, 1838. Also Le jaitas in favor of Ignacio Flores, April 29, 1838.

A. The book of the month of April, 1838, *id* not in existance.

Q. Do you know whether the book of the month of May is in exist-  
 ance?

A. The entries for the months of Jan., Feb., Mar., April, May, & June  
 are missing.

Q. Here witness shown photographic views Nos. 1 to 9, inclusive, and  
 ask him to compare them with the original exp'diente on file in his office.  
 Have you compared the photographic views with the expediente on file in  
 your office, and if so, are they correct?

A. I have compared them, and they are correct.

Q. Witness shown photographic views of parts of expediente of title to  
 the La Punta del Sargento grant to Fernando Rodriguez, dated April  
 12, 1838, from 10 to 14, inclusive, and asked to compare the same with  
 the expediente on file in his office. Have you compared the photographic  
 views with the expediente or matrix on file in your office, and if so, are  
 they correct?

A. I have compared them, and they are correct.

Q. Look at photographic exhibits Nos. 15 to 17, inclusive, and state  
 whether in your opinion they are correct signatures of Jose Justo  
 Milla?

163 A. I have examined them, and they are correct.

Q. Do you know the official signature of Jesus Trasquillo?

Witness shown photographic views Nos. 18, 19, and 20, as to the sig-  
 nature of Jesus Trasquillo.

Q. Are the photographic views shown you correct views of the genuine  
 signature of Jesus Trasquillo?

A. I have examined them, and they are genuine.

(Witness shown photographic views of Santos Vigarrias' signature.)

Q. Is that photograph a correct view of the genuine signature of Santos  
 Vigarria?

A. Yes, sir.

(Witness shown photographic Exhibit No. 22.)

Q. Is that a correct photographic view of the page Toma de Razon,  
 showing photographic view of the registry of two grants, dated April 10,  
 1838, followed immediately by one dated April 29, 1838?

A. It is correct.

(Witness shown photographic views of Exhibit No. 23, and states that  
 is the genuine signature.)

(Photographic Exhibits 1 to 25, inclusive, are filed and made exhibitd.  
 in behalf of the Government in this cause.)

Recross-examination by PLFF.:

Q. Is not a matrix and expediente one and the same?

164 A. Matrix is the original paper that remains in the office, while  
 an expediente is the copy of any paper.

Q. Is not the matrix of a grant the primary record of the same?

A. Yes, sir.

-Q. Then when there is no other record of a fact contained in the matrix than the matrix itself, does not your Government in its various departments take the recital of facts contained in the matrix as conclusive evidence thereof?

(Objection by the United States.)

A. Yes.

Q. When the matrix is not registered in the Toma de Razon, is not the fact that the matrix exists evidence of the transfer of the title from the Government to the purchaser?

(Objection by the United States.)

A. No (yes), because it appears on the matrix, which is sufficient Toma de Razon itself.

Q. Please examine the matrix of the Punta de Sargento and state whether or not the signatures thereto are the genuine signatures of the persons signing the same.

A. I have examined them and they are the genuine signatures of the persons signing the same.

Q. To correct a question asked you this morning, was it not the matrix of the grant De El Paso de Algodones that was exhibited to you and not an expediente?

165 A. Yes.

Q. Are not all the records which have been exhibited to you and called by us expedientes, the original matrix record?

A. Yes.

Q. Examine photograph Exhibit No. 23 and state if Bartolo Miranda's name appears in the original matrix of the Babacowori grant.

A. It does not appear.

Q. Please examine Vigarria and Jesus Trasquillo appearing in the matrix of the Algodones grant in question and state whether or not, if you know, that they are the genuine signatures of those persons.

A. I have examined them and they are the genuine signatures of the persons signing the same.

V. AGUILAR. [RUBRIC.]

Q. Is not the grants mentioned in photographic # 22 recognized legal titles in Sonora?

(Objection by the United States.)

A. Yes.

V. AGUILAR. [RUBRIC.]

JOSEPH R. REED,

Chief Justice.

MIGUEL CAMPILLO, sworn on behalf of petitioner, testifies as follows:

Q. My name is Miguel Campillo; my age is 72 years; my occupation a lawyer; residence, Guaymas, Mexico. I have lived there since 1836. In 1838 I was first subaltern employee of the subcommissary of Guaymas; afterward I was administrator of the revenue at Guaymas, of the State. After I was administrator, I have been judge of the first  
166 instance at Guaymas, district judge, dept. to the State congress for two terms, sec. of the Government for three terms; under those charges I had to reside in Ures. I was secretary first under Col. Cuestas, third Gen. Ramirez Arellano, second Fernando Cubillas.

Q. Did you know Jose Justo Milla in his lifetime?

A. No, sir; when I went to Ures he was residing Arispe.

Q. Do you know the official signature of Jose Justo Milla, when you see it?

A. Most undoubtedly.

Q. How do you know his official signature?

A. I know it in the official documents I have seen and in his private letters written by him; I remember to have seen letters written by Jose Justo Milla to his brother Don Juan Esteban.

Q. Were you familiar with his handwriting at that time?

A. Since that time I knew it.

Q. When was this that you knew personally his handwriting?

A. I have said before, that during my stay in Ures, as his brother Don Juan Esteban was my colleague in the congress and a close friendship existed between us.

Q. How many times and where have you seen Jose Justo Milla's handwriting?

A. I say that by virtue of the public offices I held at that time; I had the opportunity of seeing expedientes and other writings, signing them as contador of the treas.

167 Q. In your official capacities then you received from Milla at that time papers with his official signatures attached?

A. No, sir; I did not have the occasion.

Q. Then how did you receive the expedientes and other papers, knowing them as the signatures of Milla affixed?

A. I have not said that I have received expedientes; I have said by virtue of my office I have seen them.

Q. How often and during what time did you see them?

A. During the time I have said I was in Ures, in my official capacities. I have described; in 1849, when I was deputy first and afterward when I was secretary of State.

Q. When did Milla die?

A. About 1844.

Q. How old was he at that time?

A. I do not know; I was in Topeke.

Q. Witness shown testimonio Algodones and asked whether or not he knows whose handwriting the words Jose Justo Milla lastly appearing is? If so, state.

A. Positively, I can not say so, for I never saw him write it; but in my judgment it is. It is the same handwriting and rubric he used in his official acts.

Q. I ask the same question as to the writing and rubrics of Milla next to the seal?

A. It is the same.

168 Q. Did you know the seal of the auditor-general of Sonora in 1838? And, if so, state whether or not the seal attached to that document was the genuine seal of the auditor-general in use at that time?

A. Yes, sir; that is the same seal of treasurer-general of the State.

Q. Are you interested directly or indirectly in the Algodones grant or any matter growing out of it?

A. Neither directly nor indirectly. I didn't even have knowledge of the title.

Q. Here the original matrix is shown witness, and he is asked to look at its several signatures and rubrics of Milla therein, and to state whether or not he knows them, and, if so, state in whose handwriting they are?

A. The first signature on page 3, is Jose Justo Milla. I recognize another signature here, it's that of Alejo Carrillo; that the reason signatures are unlike in some places is because quills were used, and not steel pens; on page 12 the signature and rubric is that of Milla. On the reverse side of page 13 the signature and rubric are that of Jose Justo Milla, and Alejo Carrillo's name and rubric are on the same page. On the reverse side of page 14 & 15 and page 17, and reverse side of 18, the signatures and rubrics are that of Milla; and I knew Alejo Carrillo's signature and rubric on page 18 are genuine. I know Jose Jose Milla's signature is that of Jose Justo Milla; the word Jose in the middle is a voluntary mistake. The last signature and rubric on the matrix are that of Jose Justo Milla; I know the signature of Juan Encinas appearing on page 20 above that of Santiago Sanchez; and it is that of Juan Encinas, and the whole page is in his handwriting. At that date he was second alcalde of Hermosillo.

Cross-examination by MATT G. REYNOLDS:

Q. Did you ever have occasion to examine critically and carefully the signatures of Jose Justo Milla?

A. Yes, sir; I have said so.

Q. Where?

A. In Ures.

Q. Have you ever been called upon before this time to make an examination of various signatures of the name Jose Justo Milla with a view of discovering whether it had been written by Milla or not?

A. Not until now.

Q. Then you base your opinion that the signatures exhibited to you, appearing upon the testimonio, also on the matrix, upon their general appearing similarity to your recollection of signatures you have seen before, is it not?

A. Yes, sir; without doubt.

Q. Do you think the same man wrote the signature on the reverse side of the matrix, Jose Jose Milla, as wrote the signature Jose Justo Milla on the first page of the record book of this office, "The taxes on consumption of goods?"

A. Without a doubt.

Q. Did you ever see Milla write his name?

A. No, sir.

Q. Have you ever had occasion before this to examine and compare signatures of individuals with a view of determining from such comparison the genuineness thereof?

A. Yes, sir; sometime ago I was called to Tucson in the matter of determining whether the signature of Jose Maria Mendoza were genuine or not. I went for Mr. Robinson, same gentleman who appears as atty. in this case.

Q. Had you examined these signatures that have been shown you before to-day with a view of testifying as to their genuineness?

A. Only the signature Alejo Carrillo.

Q. Were you asked before to-day to examine the signature of Jose Justo Milla on the original matrix by anyone?

A. No, sir.

M. CAMPILLO. [RUBRIC.]  
JOSEPH R. REED, [RUBRIC.]  
*Chief Justice.*

FERNANDO MENDEZ, sworn :

171 My name is Fernando Mendez ; age, 36 years ; residence, Hermosillo, Sonora. Am contador of the treasury department of the State of Sonora. Have been in the position six years, but thirteen years in the department.

Q. Do you know Jose Justo Milla's official signature and rubric when you see it?

A. Have seen it many times.

(Here witness handed the matrix and testimonio in the Algodones grant and asked to state whether or not the names of Jose Justo Milla or Milla and his rubric are in his official hand as treasurer-general of Sonora in 1838.)

A. They are his.

Q. Have you any handwriting in your office corresponding to the writing in the body of the testimonio?

A. It looks like many other writings in the office which occurred about that time.

Cross-examination by Mr. REYNOLDS for U. S. :

Q. In your examination of the archives in relation to grants of public lands, did you ever find the name of Jose Justo Milla written Jose Jose Milla, except in the matrix of the Algodones grant?

A. I have not seen it in any other grant. This is the only one where I have seen it written Jose Jose Milla.

Q. Do you believe the person who wrote the signature Jose Jose Milla wrote the signature Jose Justo Milla on the front page of the  
172 book of Taxes on consumption of goods (which was shown other witnesses)?

A. It looks to me as if there was a little difference, but I think they were written by the same person.

Q. Examine the word "Milla," on July 22, 1838, in the record book, and examine the word "Milla" in the matrix of the Algodones grant, on reverse side of page 19, where the full name is written "Jose Jose Milla," and state whether, in your opinion, they were written by the same person.

A. I say as I did in the other answer, that they were probably written by the same person, though I observe a little difference.

FERNANDO MENDEZ.

BARTHOLOMEW ROCHIN, sworn on behalf of the petitioner :

My name is Bartholomew Rochin ; age, 46 years ; residence, Hermosillo, State of Sonora. Am an employee in the office of the treasurer-general. Am in charge of the archives of the Mexican land grants ; have been so for four years. Am perfectly familiar with the documents on file in my

charge. The matrix of the "Algodones grant" is in my charge. Have arranged, examined, and classified all the various grants in my charge.

Question. From your experience and knowledge and study of  
173 the records in your office, do you know the official signature of Jose Justo Milla when you see it?

Answer. Everywhere I know it.

(Here the matrix of the Algodones grant is handed witness.)

Question. Please examine this as to signatures and rubrics of Jose Justo Milla, and say in whose handwriting they are.

A. I do not know in whose handwriting they are, but I know that these signatures and rubrics, in the same handwriting, appear in more than five hundred papers in this office.

Q. Have any of the other documents containing like signatures and rubrics been recognized or are they recognized by the laws, customs, and various departments of your State as the genuine official signature of Jose Justo Milla as treasurer-general of the State of Sonora in about 1838?

A. Yes, sir.

Q. Does his signature appear alike in every place as to being connected or disconnected in the letters of it?

A. As to that, I have paid no attention.

Q. Look at the matrix in the Alameto grant, and say whether or not the letters in the word "Milla" are connected on to another.

A. It is apparent they are connected.

Q. Look at signature in the Villalobos grant matrix of 1835, and say if the word Milla is there connected as to the letters in it.

A. Yes; they are connected. It is the same signature.

174 Q. Also in another place in same grant matrix?

A. They are connected and it is the same signature.

Q. Again look at another signature in same matrix?

A. It is connected and is the same signature.

Q. Is that matrix recognized as a lawful conveyance of the title of land in this State?

A. Yes, sir.

Q. State whether or not there are any other records showing that the rubrics of Milla sometimes become broken?

A. I have not noticed it before until I see this one and another one in the matrix of "Santa Martha San Joaquin Oate, and Corral Viejo."

Q. Is this a recognized title?

A. Yes, sir.

Q. In this book, "Derecho de Fincas Urbanas," are there not two "I's" connected in another place in Milla's signature?

A. To my mind they are connected.

Q. Are not the "M's" in Milla written sometimes differently?

A. That is only the fault of the pen, but the signature of the letter is the same.

Q. In another place in the same book are there not other signatures where the "I's" are directly connected?

A. There are others connected.

Q. State whether or not these signatures of Milla in this book,  
175 being the ones shown witness Hopkins this morning, are of the same general character as the signatures in the matrix and testimonio in the Algodones grant.



A. They are the same.

Q. State whether or not there is any difference in the commencement of each rubric.

A. In the rubrics of Milla you always find those differences.

Q. How many grants were registered in 1838 in the "Toma de Razon?"

A. I do not know.

(After counting them in the book, witness answered twenty-one.)

Q. How many grants were created that year, if you know?

A. I do not know.

Q. Do you know whether there were other grants created in 1838 and not registered in this book of "Toma de Razon" (Photo Exhibit 22)?

A. I do not know.

Q. Are there not many grants or matrix's here which have not been registered in this book Toma de Razon?

A. That is true.

Q. Are there not unregistered grants which are recognized as perfect titles?

(Objected to by United States as a conclusion.)

A. There are among others; here is one called the San Fernando de la Casita."

176 Q. Examine the testimonio in the Algodones case, and say if the signature of Jose Justo Milla is in the same general character as his other signatures.

A. Yes.

Q. Do you know the seal attached to the Algodones testimonio?

A. I do not know whether that is the seal of the treasurer-general of that date or not.

Cross-examination by Mr. REYNOLDS, atty. for U. S. :

Q. Have you not just examined to find another seal of the treasurer-general of that date? If so, what is the result of your examination?

A. I was looking among the communications, but could not find a seal of that treasurer-general of that date.

Q. Are there no records of laws of the State of Sonora prescribing what the seal of the treasurer-general shall be, or does he adopt any one he may see proper?

A. I have no knowledge of those facts.

177 Q. Have you ever seen, in the examination of the archives of this office, where Milla wrote his full name Jose Jose Milla, instead of Jose Justo Milla?

A. I have not seen except the one case of the repetition of Jose Jose Milla in the matrix of the Algodones grant, but the handwriting and the rubric are the same, and Jose Jose is but a repetition.

BME' ROCHIN.

JOSEPH R. REED,

[RUBRIC.]

[RUBRIC.]

Chief Justice.

Which said Exhibit bears the following indorsements, to wit: Algodones Land Co., plff., vs. United States, defendant. Ex. Q. Depositions of Victor Aguilar et al. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18, '92. James H. Reeder, clerk, I. L. Chaves, dep'y clerk.

178 Mr. STEVENSON. I next offer the depositions of B. Rochin, J. A. Forbes, G. H. Robinson, Diego Escalante, Manuel Ferreira, Victor Aguilar, Roman Corral, Jose Mendoza, Eduardo Castaneda, Luis E. Torres, Leon-Cilas Encinas, Agustu Bustamente, taken before Justices Murry and Sluss, at the cities of Hermosillo and Guaymas, on the 26th, 28th, 29th, and 30th of November, and 1st and 3rd of December, 1892. (Petitioner's Exhibit R.)

## EXHIBIT R.

(Objected to by the United States.)

Which said exhibit is in the words and figures following, to wit:

ALGOD'NES LAND C'MPANY, PLA'NTIFF. }  
 vs. }  
 THE UNITED STATES, DEFENDANT. }

Depositions of divers witnesses taken before Justices Murray and Sluss, at Hermosillo, in the State of Sonora, Republic of Mexico, on the 26th, 28th, 29th, and 30th of November, A. D. 1892, and before Justice Sluss, at Guaymas, in the State of Sonora, Republic of Mexico, on the 1st and 3rd of December, A. D. 1892:

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181 Present as counsel : E. M. Sanford, esquire, and A. M. Stevenson, esquire, representing the petitioners ; Will. M. Tipton, esquire, special agent court of private land claims, representing the United States attorney.

Mr. James H. Reeder, clerk ; Mr. L. F. Parker, jr., official stenographer.

It is hereby stipulated and agreed by the respective attorneys [2] of record of the said parties, that all objections as to the competency, relevancy, or materiality of the testimony here and in this manner taken, except objections as to the form and manner of taking the same, can be made by either party at any time before the trial, or at the trial of said cause, or at the time said depositions are offered or read in evidence in this case.

It is further stipulated and agreed by and between the parties hereto, that Hon. James Alexander Forbes, United States consul at the port of Guaymas, in the State of Sonora, may act for and on behalf of each of the parties as interpreter.

(NOTE.—The depositions offered and taken at Hermosillo were in the office of the custodian of the archives in the treasury department.—Steno.)

182 BARTOLOME ROCHIN, being first duly sworn on behalf of the petitioners, testified in Spanish as follows :

Hon. J. A. Forbes, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Question 1. What is your name, age, and official position ? [3]

Answer. I am forty-six years of age and am a public officer here.

Q. 2. What is the style of your position ?

A. I am the keeper of the archives for the treasury.

Q. 3. How long have you held that position ?

A. For five years.

Q. 4. Since what date ?

A. Since 1886.

Q. 5. State whether or not you are familiar with the archives of the State of Sonora.

A. I am perfectly familiar with all of them, as I have arranged these archives.

Q. 6. State what document this is I hand you.

A. That is a matrix of the grant of Huabrari.

Q. 7. In what district does the land lie ?

A. In the district of Mictuzama, in the State of Sonora.

Q. 8. These few leaves that are separated in the grant, are they part of the original document ?

A. This is the same original draft of the proceedings that were had after the land had been sold at auction, and this was the commencement of the final proceedings of which [4] the treasurer-general gave the title to the int'rested parties ; he said, also, that he had a whole book like this of such drafts as these.

Q. 9. Is that a record document of this office ?

A. Yes, sir.

Q. 10. State if that document is recognized by the executive, judicial, and legislative departments of this country as evidence of the facts therein recited.

A. Yes, sir; because the titles which are issued to the interested parties are commenced in this manner; because the matrix or the original title remains here, and this is a certified copy that is given to the interested parties, and is commenced in this way, and ends like the last two pages of this draft.

Q. 11. Then, if I understand you right, this is the form of the heading for the testimonio in the Guepare grant; then the matrix follows, and ends with the latter part of this document, of which this is the original draft, and the testimonio is delivered to the interested parties?

A. Yes, sir.

Q. 12. What is the date of this document? What is the date of the expediente of the Guepare grant?

A. On the 19th of October, 1832.

184 Mr. SANDFORD. We now offer to have read in evidence a portion of the document which the witness has referred to, and interpreter reads as follows:

"Jose Maria Mendoza, treasurer-general of the free [5], independant, and sovereign State of Sonora: Whereas, October 11th, of the sovereign decree numbered seventy of the General Congress of the Union, dated August 4th, 1824, granting to the States the revenue that by such law was reserved to the federation, and one of those revenues being from the lands of their respective districts, and which belonged to them by consequence, in which it was ordered by the honorable constituent congress of the State that was united by that of Sonora and Sinaloa, according to law number thirty of the 20th of May, 1825, as well as the successive legislatures by other decrees relative thereto, there having been made a formal denouncement on the 11th of June, 1827, by the Citizen and citizen Fernando Rodriguez, resident of San Maria de Bacrac, before the treasurer-general, who was of the United States, for that tract, named or offered, situated within the same jurisdiction, there was admitted to him according to law, on the date of the 26th of April, 1828, by previous justification, with a certificate from the alcalde of the mentioned Pueblo that the interested party had sufficient quantity of stock or property to place upon the land which he registers, &c."

185 Q. 13. From August 4th, 1824, up to the year 1834 were the [6] forms of these testimonio's generally the same as that?

A. The same.

Q. 14. I will ask you if the form used in the testimonio's of all grants were the same after 1834 as that of the Algodones testimonio, in a general way, so far as recitation of laws were concerned?

A. Exactly the same; the whole of them were exactly the same. This one is just the same as that. "Whereas, by October 11th, &c.," and closes finally in the same manner.

Q. 15. Then the commencement and ending of these testimonio's are of the same general character?

A. Exactly the same in every particular.

(Plaintiff's Exhibit A offered and introduced.)

Q. 16. State what document plaintiff's Exhibit A is.

A. It is a list compilation of the dates of grants that exist in the treasurer-general's office and a form made by myself.

Q. 17. Does the Algodones and Sargento grants appear enlisted in this document?

A. Yes, sir.

Q. 18. What book is this now handed witness?

A. It is a registry book of titles issued from the year 1831 to 1849.

186 Q. 19. Known as the Toma de Razon? [7]

A. Known as the Toma de Razon.

Q. 20. Is that book one authorized by the laws of Sonora, or is it a memoranda book, kept for the convenience of the treasurer-general?

A. It is a book made for the purpose of being presented in evidence—wherever it may be presented.

Q. 21. Do you know whether the laws of Sonora of 1838 required that book to be kept—by statute law?

A. I don't know, but I suppose it was, because it contains the amount paid for all lands that were granted between the dates '31 and '49.

Q. 22. Look at the records for the year 1838—how many grants are registered in that book in that year, 1838?

A. Twenty-one.

Q. 23. Give the name of each grant and its date.

A. Ano de 1838. January 31, Saguinal.

February 10, Huerta de Jalpa.

February 20, Seri.

March 3rd, Rancho de Moreno.

March 10th, Ranchito de los Monreales.

March 18, Mescales.

March 27, Garrote y Rancho de Santos Grijalva.

March 27, Llano de la Cabeza.

April 10, Iusibampo.

April 10, Pedro del Templo.

April 29, Lajitas y Palos Cramos.

May 21, Cieneguita.

May 30, Santa Gertrudis y Pavier de Leon (huecos y baldios entre estos ranchos).

187 May 30, Fasteota y Oguia, Moranda. [8]

May 30, Pacion.

May 30, San Antonio.

May 30, San Jaun de Madrid.

May 30, Crevantes.

June 30, Santa Cruz.

June 30, Cendraditas.

July 30, San Rafael del Carrizal.

Here a recess was taken until 3 o'clock p. m.

At 3 o'clock.

Q. 24. Have you named now all of the grants that were registered in the Tome de Razon, in 1838?

A. Yes, sir.

Q. 25. Was the title to the Auga Salada y Caborquenos issued in 1838?

(Question withdrawn.)

Q. 26. In what year was the title to the Pocitos made?

A. In the year 1838.

Q. 27. Is that grant mentioned in the Toma de Razon for 1838?

A. No, sir.

Q. 28. In what district and State is that grant located?

A. District of Hermosillo, in this State.

Q. 29. Do you personally know whether that grant—the Pocitos grant—is recognized as a valid grant to-day?

A. All grants which appear here are genuine, and these which I have offered to testify to are legal grants.

Q. 30. Do you know where the Pocitos grant is situated?

A. No, sir.

Q. 31. Do you know who owns it?

188 A. I do not say, but I hear it is by the agents of Ceriao [9] Aguirre.

Q. 32. What is the date of that grant—month and day?

A. 1838.

Q. 33. What day of the month?

A. I can only tell by looking at the expediente.

Q. 34. Are not these entries that are made in the Tome de Razon made when the title is issued, and not when the land is denounced?

A. The entries are made at the time the title is issued.

Q. 35. And is not the title issued at the time the money is paid?

A. Sure.

Q. 36. And not before?

A. Of course not.

Q. 37. Then when the purchaser of these lands pays the money, the entry is supposed to be made in the books, and not until then is the title issued?

A. Before that he has no rights whatever, and only after the time the money is paid, then does he acquire any rights.

Q. 38. In what year was the Saguara grant title issued?

A. 1838.

Q. 39. Is there any note of that title in the Toma de Razon?

A. Yes, sir.

Q. 40. Are there any grants the titles to which were issued in 189 1838, that you have not mentioned? [10]

A. There are a great many that are not in the Toma de Razon, and those issued during the month of April, 1838, are wanting because the book of Toma de Razon was taken away from here of that date some years ago. It is already five years since I have been in charge of these archives, and it was not here then.

Q. 41. In whose handwriting is this pap'r?

A. It is the writing of the same Mr. Telles, who was the same treasurer-general.

Q. 42. When was Mr. Telles treasurer-general?

A. It is not mentioned the date here, but I have a great many documents that tell (after looking), '77 or '78.

Q. 43. Has this paper been with the records of the treasurer-general's office since you have had charge of the office?



A. Yes, sir; I took this document from the archives in the treasurer-general's office.

Mr. E. M. SANFORD. We ask now to have the document about which witness has just testified read at length and placed on the record as part of Mr. Rochin's testimony. And the interpreter read as follows:

"I, Manuel Diaz, as treasurer-general of the State of Sonora, Mexican Republic, acting by notary public, appeared Matias Moran and citizen

Antonio Corrillo, of this presinet, who do say that, being person-  
190 ally present in the treasury office for the purpose of giving [11]

compliance to the foregoing disposition or order of the governor of the State, proceeded to examine, one by one, the signatures of which are contained in the expediente that forms the title to the lands situated between the Colorado and Gila rivers, that in the year 1838 was adjudicated to Don Fernando Rodriguez, in that of 1847 was approved by the Supreme Government of the Nation, as a result of the examination we have made of the original expediente above referred to, the lines with which it is written and the signatures that accompany (?) it, we are able to certify, and effectively do certify: First. That we had before us an expediente headed with this name: Title of the grant, &c. Second. That said title is composed of, or contained in—blank—useful written pages on stamped paper, that was issued at the period when it was issued, and it is altogether the same paper that we have seen in hundreds of expedientes upon the adjudication of the vacant lands. Third. In this same manner we certify in due form that the title which we have seen and had before us contains or embraces five square leagues of land contiguous to the Gila and Colorado rivers, opposite the junction or confluence of  
their waters, and comprised within the points named is? El Paso

de Los Algodones. Fourth. That the mentioned title was issued  
191 and authorized by the treasurer-general of [12] the State, Don

Jose Justo Milla, his signature being found upon the expediente being exactly equal to those that he used in all his official acts, and with which he would legalize all the documents that he would issue, whether as a public functionary or as a private person. Fifth. That the signatures of Senors Francisco Mendoza and Jose Carrillo that appear upon the expediente are the same that was used and were accustomed in all their official acts, and for that reason we consider them legal and genuine—those that they wrote (or made) at the auction board, celebrated for the auction sale of the mentioned lands. Sixth. Lastly (or finally), we certify that the signatures of the surveyor, Don Ricio Carrillo; those of Alijo Carrillo, Luis Carranco, Santos Vigarria, and Jesus Trasquillo, who served as attending witnesses in all of the proceedings of the expediente, as well as those of the appraisers, Julian Padilla and Alonzo Maria Treciera, and those whose signatures appear in the expediente El Paso de Los Algodones, are genuine because they were the same that they were accustomed to use in all their writings during their lifetime. And in order that this may be evidence where necessary, and it may be convenient, we give the present certificate in the city of Hermosillo, capital of the State of Sonora, Republic of Mexico, [13] on the  
192 (blank) day of the month of June, of the year 1881. Signed under our own hands and seals and the seal of the treasury-general and of the notary public, the citizen Marcus Moran."

Witness excused.

Mr. J. A. FORBES, being first duly sworn on behalf of the petitioners, testified, in English, as follows :

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and place of residence?

A. My name, James Alexander Forbes ; my age is fifty-four years ; my residence at present, Guaymas ; my home is Alameda County, California.

Q. 2. What official position do you now hold?

A. American consul at the port of Guaymas.

Q. 3. What official position were you holding at time of receiving your appointment as such?

A. Keeper of the archives and Government translator of the United States surveyor-general's office, in California.

Q. 4. From whom did you receive your appointment as keeper  
193 of the archives? [14]

A. From the surveyor-general in office at the time.

Q. 5. From whom did you receive your compensation?

A. From the United States Government.

Q. 6. How long had you held that position?

A. Fourteen years.

Q. 7. State whether or not you have made indexes of records and signatures, and of grants of the Spanish and Mexican governments, or States during that time.

A. Yes, sir.

Q. 8. Are you not familiar with the language?

A. Yes, sir ; I am.

Q. 9. How long have you been familiar with the language?

A. Since I commenced to speak it.

Q. 10. Do you read and write that language?

A. Yes, sir.

Q. 11. Can you translate the Spanish language into the English and the English into the Spanish?

A. Yes, sir ; tolerably well.

Q. 12. What were your duties as keeper of the archives of the surveyor-general's office of the State of California?

A. To translate the entire records and make a compilation of the contents of all of the military and civil archives of the Government, and to  
194 compile and make translations of all grants, expedientes, and documents that are contained in the several land claims, either in the

[15] archives or presented by the claimants to the lands for compilation, and to furnish translations or copies of any documents that were required by the parties who made proper application therefor ; to make reports with reference to the condition, validity and status of the several grants, as they would be required of me by my superior.

Q. 13. State from what languages and into what languages these compilations and translations were made by you.

A. They were made from the Spanish into the English, the records all being in Spanish, they being ancient records that pertained to both Spanish and Mexican matters prior to the date of the American occupation.

Q. 14. And did this work of yours involve the laws of Spain and Mexico concerning land grants?

A. In a great many instances the laws were quoted and the manner and mode of granting lands were given.

Q. 15. Do you know the manner and form in which land grants were made in the Republic of Mexico during the last one hundred years?

A. Somewhat; I have an opinion; I have an idea as to how they were granted.

Q. 16. Would you please state to the court the history and manner in which these grants were made?

195 A. I don't consider myself an expert on that matter [16]; you will excuse me if—

Question withdrawn.

Q. 17. Do you know what, in the granting of lands, is the record of the grant?

A. Yes, sir.

Q. 18. What is the name or style of the document which makes the complete record of the grant?

A. They call it here the matrix.

Q. 19. What is the general character of the matrix?

A. It is the record of the proceedings by which it is shown all of the acts and the proceedings thereto has been done. After this application was made by the interested party who would solicit for a tract of land, of vacant land.

Q. 20. Of what kind of material is this matrix made of, form of it, the general appearance of it?

A. The contents of the papers is an application of the parties who solicit for the land, and a notice or order to the authorities of the district in which the land is situated, for a report, &c., then the order and notice given to the surrounding neighbors, or who may allege any rights in the premises, a report of the authorities to the superior, then the decree  
196 of said authority, if the grant was subject to alienation [17], and an order for publication, &c. The lands granted in California were lands granted by the colonization act of August 18th. Here there were none. They were made in conformity with the annual regulations, that had not been repealed, which are situated in the Amd Indios of Dec. 4th, 1786.

Q. 21. Then does this matrix contain all the papers that go to make up the proceedings on which a grant or sale of land is made?

A. Yes, sir.

Q. 22. Then it does form a similar record, as found in other documents conveying other lands?

A. Yes, sir.

Q. 23. Please examine this document and state whether or not you have ever seen it before.

A. No, sir; I looked over it this morning.

Q. 24. Do you know what document that is?

A. It purports to be a record of the proceedings instituted for the measurement, appraisement, and public sale at auction of five square leagues of vacant lands, for the purpose of cultivation in favor of Don Fernando Rodriguez, a resident of Hermosillo, which lands are situated contiguous to the Colorado and Gila rivers, opposite the junction of the same,  
197 and as far as the point named El Paso de Los Algodones, on the same Colorado [18] River to the north of this State.

Q. 25. What is the name of the grant?

A. El Paso de Los Algodones.

Q. 26. State whether or not this document is the original matrix of the Algodones grant?

A. It seems to be the original expediente, a record of the proceedings of the sale of said lands, and styled by some the matrix; that's what we call it here.

Q. 27. Do you not find in that document signatures purporting to have been made by Jose Justo Milla?

A. Yes, sir.

It is agreed between the parties that the books examined by the witness are the official records of the treasurer-general's office in the State of Sonora, each of which are admitted to be genuine.

By Mr. STEVENSON:

Q. 28. I will ask you if in your opinion the matrix of the Algodones grant, that you have examined, is in the regular and proper form, and contains the full record of the proceedings required to be had for a grant or sale of public lands, of the character indicated by the paper examined?

A. I think it is.

Q. 29. I will ask you to examine the signatures of Jose Justo Milla now in this original matrix, as well as the signature of Milla without the words Jose Justo, and state whether or not they are the same signature [19] and the same rubric, and if in your opinion they were written by the same person.

A. From what I have seen of them I think they written by the same person.

Q. 30. I will ask you to compare the signatures of Jose Justo Milla, appearing on the matrix now being examined by you—being the matrix of the Algodones grant—with other signatures of Milla, now in the several books handed you, as well as Milla's signature as found in the matrix's of the Ceverantas grant, and in the Jamita y Tomeorobabi, and the Jucarros, and the Buelo Biejo, and the Cienjueia, and the Jesus Maria, and state whether or not the signatures of Milla in the Algodones grant are the same as those in the other grants and records examined by you.

A. I think they are.

Q. 31. Then if the signatures of Milla appearing in these record books and different matrix's examined by you are his genuine signature, what is your opinion as to the signatures of Milla in the Algodones case as being or not genuine?

A. My opinion is that no person has a right to question the validity of the documents that purport to be the original genuine records of the State of Sonora as valid and kept by the constituted authorities of the State. I could not pass an opinion nor say anything except that all the documents contained in the several matrix's and expedientes that purport to be the records of the country are genuine.

Q. 32. Would the fact that there was a difference in the several rubrics used by the different officials in any way tend to make you think that such difference was evidence of the signatures not being the true and genuine signatures of the officials purporting to sign these documents?

A. No, sir; because the Government officials, as shown by the Mexican and Spanish records, show little or not much ability in signing exactly the same at all times.

Q. 33. I will ask you to examine the signature of Jose Carrillo, appearing in the original matrix of the Factaria grant made in 1837, with his signature in the Algodones grant, and say whether or not in your opinion each of those signatures was written by the same person.

A. I think they were.

Q. 34. Mr. Forbes, you have compared the signatures of Jose Justo Milla, as the same appear and are found in the different books of record of the treasurer-general's office, as well as those of his signatures attached to the different original expedientes or matrix's of title  
200 examined by you, with his signatures as the same appear [21] upon the different papers attached to and being a part of the grant in the Algodones case; I will therefore ask you if, in your opinion, based upon such comparison and examination, and from your *your* knowledge of Spanish and Mexican documents and handwriting, the signatures of Jose Justo Milla, as the same appear on the several papers in this case, are his true and genuine signatures?

A. All of these signatures that purport to have been made by Jose Justo Milla seem to be in the same handwriting; the rubrics are all the same and written seemingly by the same person; only one signature where any difference is found is where the word "Jose" is written twice, but the paraph is the same; I would therefore say in my judgement if one are genuine the whole of them are genuine.

Q. 35. I will ask you. Mr. Forbes, to as briefly as you can, and in your own way, give a history of your understanding of the manner of making grants, concessions, or sales of public lands by the Spanish and Mexican authorities, or by the authorities of either of these countries.

A. From the knowledge that I have derived by study and my familiarity with the Spanish, I have found the manner of granting lands by Spain in the early period were as follows: Petitions were made  
201 by the applicant either to the viceroy or to the governor of the province [22], or to the chief authority. The application was forwarded to these authorities, who would order an examination of the land to be made, first, to find out whether the same was vacant or not; second, to know whether or not the same belonged to any individual, corporation, or pueblo; third, whether the applicant possessed the necessary qualifications that would entitle him to be heard on his petition. The report was then forwarded to the governor or to the viceroy. If agreeable, the grant was issued by the viceroy or by the governor of the province. In California only two grants were made by viceroy's; one made by Don Jose de Galvez, visitor general, made to Don Felipe Romero, for the entire district or country known as the Mission Lands of San Luis Gonzalzel; this was in 1776. The other was made by Viceroy Marquina, made to Mariano Castro, in 1802, which tract was named Las Animas la Brea.

The grants that were made by the governors of the provinces, Don Pedro Baca Vages, Don Diego Borica, Don Guiquin Arillaga; those by Pedro Faces were made in 1784; one to Manuel Perez Nieto, named Santa Gertrudes, for sixty-eight square leagues; one to Jose Dominguez for

twenty-two square leagues, named San Pedro; one made to Don Diego Borrica, named El Pilar, and others that I might name—Arrilaga, or All Saints Bay, and another of San Arrilaga, or All Saints Bay, and another of San [23] Tiaga to Jaun Pablo Grigalbo; these grants were approved by the commandant-general of the internal provinces, Don Jacobo Ugarte y Loyola, in July, 1786. Subsequently applications would be made to the audiencias, when all concessions made in these partitions had to be forwarded for approval to the audiencia of Guadalajara. The ordinance of intendants in 1786 required applications should be made to the intendant-general; afterwards, when the internal provinces were divided from those of the west, the subdelegates of the royal treasury took the place of the intendencias, and all applications had to be addressed to them. Grants were approved by the royal board of the treasury that existed at the capital of each province where there was an intend'cia. Lands were granted upon application by the intendant-general, who would order an examination of the land to be made, surveyed, and appraisement of its value, and be advertised for sale at public auction thirty consecutive days, after which the land would be sold to the highest bidder.

After the Mexican independance, the manner and mode of granting lands was not materially changed, but the form continued to be used and observed, even as late as 1838. The Mexican Congress passed laws for the distribution of vacant lands; lands were given gratis in the territories of the Republic of which the law of 18th of August, 1824, and the regulations of 21st of November, 1828. But the States did not make grants in that way; the lands of the States were not given away, but sold to the highest bidder in the same way that they had been alienated prior to the date of independance. The State of Sonora had its colonization law of 20th of May, 1825, and so did the State of Chihuahua. The grants that have been seen to-day seem to have been granted in accordance with the provisions of the colonization law of 25th and that of the 11th of July, 1834.

Q. 36. When you refer to the colonization laws of 25th of July, 1834, do you mean the colonization laws of the Republic of Mexico or the colonization laws of the State of Sonora?

A. By the law of 4th of August, 1824, the Supreme Government of Mexico passed a law defining what the revenues of the Government were, and left to the States all that source of revenue that was not mentio'ed in the law as belonging to the Federal Government, and that revenue which was not mentioned in the law as pertaining to the Federal Government was the revenue that could have been derived from the sale of public lands.

Q. 37. Prior to the enactment by the General Government of the law of August 4th, 1824, was part of the revenue that which was obtained from the sale of the vacant lands [25] in the colonization laws of the Mexican Government passed after the independance of Mexico, did the General Government attempt to dispose of any lands within the demarcations of the several States, or was the Government's disposition of vacant lands by its colonization acts confined to lands within the territories?



A. My understanding of the general colonization law was that the lands, when given in colonization, were given to the colonists gratis, and these lands were limited only to the Territories of the Republic, which were not free and sovereign.

Q. 38. Then, if I understand you correctly, your understanding of the colonization laws of 1823 and 1824, and of the other laws of the General Government relating to public lands, was that the States owned the lands within their boundaries and the General Government claimed ownership within the Territories?

A. Yes, sir; by consent of the General Government.

Q. 39. Was not the distinction between the colonization act of August 18, 1824, and the manner of disposing of vacant lands in the States, that the lands were given gratis under the colonization law, while under the procedure in the States they were sold?

A. Yes, sir.

205 Q. 40. Prior to the law of August 4th, 1824, was it not the fact [26] that there were no sales of the fee made, but that the juridical possession only was given?

A. Yes, sir; only a permit to occupy.

Q. 41. Then, under the law of August 4th, 1824, and of the States, the laws of the State of November 25, 1834, the proceedings amounted to a sale of the land fee?

A. Yes, sir; that is the way all the titles were issued or given. By the fifth condition contained in every grant that was made in accordance with the provisions of the act of October 18th, and August 24th, and article 5 of the regulations of 21st of November, '28, it was provided that if the party interested contravened the conditions that were stipulated in the grant he would forfeit his right to the tract so given, and it would be subject to denouncement by another party, and in the close of all grants made in this State it was stated that no person could molest or disturb the grantee, and that he should enjoy the full and absolute ownership of the land.

Q. 42. The law of August 4th, 1824, as I understand you, granted to the States the right to use the revenue from the sale of vacant lands?

A. Yes, sir.

206 Q. 43. Then the law of August 18th, 1824, known as the colonization act, gave the lands away gratis to settlements within the Territories of the Republic, but not in [27] the States?

A. No, sir.

Q. 44. It has no effect in the States whatever?

A. No, sir.

Q. 45. Were there not in existance, in August 18, 1824, Territories other than those of California and New Mexico?

A. I don't know.

Examination by Justice SLUSS:

Q. 46. Have you much acquaintance with the manner of making of these documents, which were called the matrix, in this State of Sonora?

A. They were nearly the same as those found in California, except in some particulars, in which they differ.

Q. 47. Well?

A. I have seen many grants of land made in Sonora that seemed to me to be in the same form.

Q. 48. Are these proceedings made from a memoranda, as the several acts which are recorded were performed, or were they made as an entire record after the proceedings were completed?

A. Each act was inserted in the expediente as the expediente continued, or proceedings continued.

Q. 49. Then, in your opinion, when an offer of a sale had been  
207 made and no parties appeared, a report to that effect [28] was made at the time and entered in this expediente immediately, before any other act was performed?

A. Yes, sir.

Q. 50. In your opinion, then, it was the act of August, '24, that the States derived its authority—was it the law of '24, or a law prior to that time?

A. The State of Sonora could not derive its right to the land from any Spanish law after the date of the independence; but my opinion is that it derived its power to sell the lands from the law of 4th of August, 1824, the act of August 18, 1824, from the general act enacted by the general congress on colonization, the general laws of missions.

Q. 51. Did the General Government exercise any powers over the land in the States after it had been granted by the States to anybody?

A. I don't believe they did, except the revenue that could be derived from those sources that are mentioned in the very law itself. Of course the source of revenue which the Government reserved are mentioned in the law, but no mention is made of revenue of the sales of lands as belonging to the General Government, but it says all sources of revenue not mentioned in that act shall belong to the States, and every paper that  
208 was shown to-day in the archives of this Government recite that [29] very law and the power that the Government of the State derived therefrom—the act of August 4th, 1824.

Direct examination—Continued.

E. M. SANFORD, Esquire:

Q. 52. Under this act of March 4th, 1824, and of the acts of 1825 and '34 of the State of Sonora, when a sale of land was made and the testimonio issued to the purchaser, did the fee pass or only the right of possession?

A. The fee, under a full ownership.

Q. 53. Then did that continue in the owner of the grant until it became denounced for want of compliance with some of the conditions therein contained, by some third person?

A. I do not remember whether any condition of that kind was embraced in the grants.

Q. 54. But if there were conditions attached to the grant so that the by the Government, or denouncement by third parties?

A. With reference to grants made under the colonization law of August 4th, 1824.

Adjourned until Monday, December 28, 1892.

It is agreed, for the purposes of this case only, that the several signatures of Jose Justo Milla (his name in full), as his name signed as Milla,

and other officers, photographed, and about which witnesses have testified, are genuine signatures upon public documents and records in the archives of the office of the treasurer-general of the State of Sonora, and are true and genuine. This agreement does not extend to the signatures attached to the papers in the Algodones and Sargento grants.

GUILLARMO H. ROBINSON, being first duly sworn, on behalf of the petitioners, testified in English as follows :

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and residence, and where do you reside ?

A. Forty-seven ; my name is Guillermo H. Robinson, attorney ; residence, Guaymas.

Q. 2. How long have you been a practicing attorney ?

A. Since 1881.

Q. 3. What official positions, if any, have you held in the State of Sonora ?

210 Everything. Member of Congress, judge of the first instance, mayor of Guaymas several times (am mayor [31] now), judge of the supreme court of the State, federal district judge.

Q. 4. How long have you resided in Sonora ?

A. I was born in Sonora, Guaymas.

Q. 5. Have you ever, at any time, made an examination of the archives in the office of the treasurer-general of this State ?

A. I have.

Q. 6. Have you done so for the purpose of making a comparison of the signatures of Jose Justo Milla and those mentioned in certain documents ?

A. Yes, sir.

Q. 7. For what years have you made those examinations ?

A. In the Sopori case, in the year 1881, for the years '33 to '40.

Q. 8. Since 1824, under what federal law, if any—up to 1840—what federal law, if any, has been the authority for making sales of lands ?

A. What federal law ? The law of August 4th, 1824. It is the law which grants the State the revenue derived from the sale of public lands, in article or section 11th.

Q. 9. I will ask you to state whether that book which you have 211 before you is recognized by the executive, judicial [32], and legislative departments of this country as being authoritative of the laws in force at that time ?

A. Yes, sir ; and upon which all decisions are based.

Q. 10. Please give the name of the book, volume, and page on which the law is found.

A. "Legislacion Mexicana, 8 Coleccion Complete de las Disposiciones Legislativas, por, Manuel Dublan and Jose Maria Lazano, official edition, volume first, page 710."

E. M. SANFORD, esquire. We now offer this law of August 4th, 1824, in evidence.

Q. 11. In this section 11, article 11 of that act, is used the word "rentas." Do you know what is the use—general use—of that word in the Spanish language ?

A. It is the revenue of the Government, or income either, from leased property, or other sources. It is the revenue of the Government.

Q. 12. Prior to the passage of that law, was no money derived from the sale of the land?

A. As a part of the revenue of the Government. The intendencias used to sell the land.

Q. 13. That was the authority; but was the money received from the sale as part of the revenues of the country?

A. Yes, sir; it was.

212 Q. 14. Do you know the law known as the colonization law of [33] August 18, 1824?

A. I have it before me.

Q. 15. Was it or not a federal law?

A. It was a federal law on colonization.

Q. 16. Do you know whether or not that law was ever construed, either in practice or otherwise, to apply to the States of Mexico, or did it apply solely to the Territories of the Republic?

A. It applied to the States, entirely on colonization, restricting the granting of more than eleven leagues of land within twenty leagues of the frontier States, or five leagues from the border of the waters of the sea.

Q. 17. Then this restriction only applied to certain distances on the frontier, and on the border of the water?

A. Here's what it says about it: Article 2nd of the law of April 25th, 1835, says: "That in the use of the authority reserved by the General Congress in section seven of the already mentioned act of August 18th, 1824, the bordering States and those on the seas are hereby prohibited to alienate or sell its waste lands for the purpose of colonization, until the rules are established for the way it shall be done."

Q. 18. What book have you just been reading from?

213 A. The same—Colonization Laws, volume 3, page 12 [34], number 1552.

Q. 19. Was there or not any limitation upon the power of the State to sell or grant its lands to any person having the means to take care for the same?

A. There was no restriction whatever, provided that the petitioner proved to the satisfaction of the granting officer that he had stock enough or cattle enough to stock the ranch.

Q. 20. Then the State had a right to grant as many leagues of land to any one person of means as it saw fit?

A. Yes, sir.

Q. 21. And did the State exercise that power and grant to one person more than eleven leagues, or as much as they would show to the granting officer that they had means to take care of?

A. Yes, sir.

Q. 22. Do you know whether or not this was frequently done after 1824?

A. It was done until the enactment of the law of July 20th, 1863, which restricted an individual to hold more than twenty-five hundred hectares, excepting in cases where he has had possession for over ten years.

Q. 23. Have you the law of Sonora and Sinaloa of May 20, 1825?

214 A. I haven't it here, but it is in my office at Guaymas. [35]  
Q. 24. Have you the law of July 11th, 1834?

A. I have it also in my office at Guaymas.

Q. 25. You may state whether you are familiar with the law of which this is a copy.

A. I am familiar with the law, and this copy was made in my office.

Q. 26. Is this a copy of the law applicable to the sale of lands in 1838?

A. Yes, sir; it is.

Q. 27. Was the law in vigor in 1838?

A. That is the only law covering the treasury department in vigor then.

Q. 28. For the sale of public lands?

A. Yes, sir.

Q. 29. Are you familiar with the practice of making grants, the proceeding for the sale of land under that law?

A. I was not present at the sales of any lands, but by information I know, and from an examination of the different grants, I know the form.

Q. 30. Will you please state to the court the manner of proceeding at that time for the application and sale of lands?

A. The party wishing to acquire lands presented himself in  
215 writing before the treasurer-general, giving a des [36] cription of the land he wished to acquire, and, accompanying his petition, the written testimony of three or more witnesses to prove that he had cattle enough to stock the amount of land he asked for. The granting officer, the treasurer of this State, being satisfied of such testimony, the petition was admitted and a measurement of the land ordered to be made. The measurement being finished, the treasurer, the judge of the first instance, and the prosecuting attorney formed into a board called the "Juntas de Almonedas," and the land was published for thirty days to be sold at public auction, after which it was adjudicated to the petitioner by paying the price, according to a tariff in the law of 20th of May, 1825. I am not sure about the thirty days, but I think it was thirty days.

Q. 31. Do you know how the record of such a sale would be made up?

A. All of the proceedings which I have already mentioned were taken down on loose sheets until the whole of the proceeding was finished and then sewed up together, and the proceedings altogether were called "the expediente" and was the record of the grant. An authenticated copy of all the proceedings was then given to the grantee, to serve as title.

216 Q. 33. From your examination of these documents, how long a [37] period would they generally be before certified by the officers' signatures to the proceedings?

A. It entirely depended upon the time it took to finish the expediente, from three, four, five to six months; there are some grants here that were five or six years; that is generally on account of the Indians, the Apaches.

Q. 34. And the several papers were written up by some clerk and presented to the different officials and all signed at one single time?

A. Yes, sir. Where the land was bought at public auction, the clerk writes out the date and declaration that at that date it had been published for auction; after that is copied it is signed; therefore the whole of those thirty days are written up in one single day.

Q. 35. Then, when all these papers are put together you say they form the absolute record of the grant to the lands?

A. Absolutely. It is called the expediente or matrix, and is the record of the title.

Q. 36. What is the authority for the acting of this board of almonedas?

A. It was provided by general law of 17th of April, 1837, article 74. It says: This board shall be formed by the officials, which I have already mentioned—

Q. 37. Are the officials who shall comprise this board named in 217 the act? [38]

A. Yes, sir. The treasurer-general, the prosecuting attorney, the collector of rents, and the judge of the first instance.

Q. 38. Was the prosecuting attorney the "promotor fiscal?"

A. He was called the "promotor fiscal," or "fiscal de hacienda," which amounts to the same thing.

Q. 39. Is that an act of congress of the Republic of Mexico?

A. Yes, sir; general law of the Republic of Mexico.

Q. 40. And that, as I understand you, designates certain officials to preside at the sale of public lands at the various parts of the Republic?

A. Yes, sir.

Q. 41. Do you know how the treasurer-general was appointed or elected; whether by general or State authority?

A. The treasurer-general was appointed by the State's authorities.

Q. 42. How as to the other officials mentioned in that act?

A. All the State officers are appointed by the State authorities.

Q. 43. Do you know whether that act was ever amended or supplimented?

A. There is a law of 7th of December, 1837, authorizes the governors of the different States to have an intervention in the branch of the 218 treasury until the law of the 7th of April, already mentioned, be revised. [39]

E. M. SANDFORD, esquire. We offer these two laws in evidence.

Q. 44. Do you know the relation the Toma de Razon bore in 1837, in the archives of the treasury department in 1838? If so, state.

A. The Toma de Razon was a book kept as a memorandum of the different titles issued; or copies—by copies I mean, authenticated copies given of the expedientes or matrix's that existed in the treasury department.

Q. 45. Was it any part of the record of the title?

A. No more than it was for the information of the treasurer that they had been issued—and a matrix was usually made on the bottom of the title that it was registered in the Toma de Razon.

Q. 46. Was there any grants issued—from your examination—in 1838 which had not been noted in the Toma de Razon, and that lie within this State or that of Sinaloa, and are now in existence, as valid titles and recognized by the Government as valid titles?

A. There are several; I can give you the list. I examined the records in 1881, and found the following not mentioned in the Toma de Razon: Sahuaral, Huerta de Jalapa, La Cieneguita, Santa Gertrudes, Cendradas, La Pasion, Santa Ana, San Rafael del Carrizal.

Q. 47. In 1881, did you find that these were not mentioned in 219 the book called the Toma de Razon, for the year 1838? [40]



A. Yes, sir.

Q. 48. Were these grants of '38.

A. They were either '37, '38, or '39; I think they were within one year of '38.

Q. 49. They are not mentioned in the Toma de Razon corresponding to the date on which they were issued?

A. No, sir.

Q. 50. Do you know Jaun A. Robinson, mentioned in these proceedings?

A. I knew him; he was my father.

Q. 51. Do you know whether he held any official positions in this country, or for the American nation?

A. My father was an American citizen and held no position with the Mexican Government, but was for seventeen years American consul at the Port of Guaymas.

Q. 52. Where did he first reside in the State of Sonora?

A. In the State of Sonora, in the years '25, in the city of Alamos, where he married and moved to Guaymas in 1833.

Q. 53. How long thereafter did he continue to live at Guaymas?

A. To sixty-nine, off and on.

Q. 54. How old was he when he died?

A. Eighty-seven years and six months.

Q. 55. In what year?

220 A. He died October 17th, 1889, in San Francisco, State of California.

Q. 56. Did you know Fernando Rodriguez, petitioner for the Algodones grant?

A. Yes, sir.

Q. 57. How long and where did you know him?

A. I knew him when I was a boy, Fernando Rodriguez, I remember him well; I used to see him at Guaymas.

Q. 58. Do you know whether he was engaged in any business in this country at any time?

A. He was a merchant in this city.

Q. 59. Between what dates, within your recollection?

A. Of course, I could tell that by going over my father's papers, but I can not remember now; I remember very well though, because he used to come to Guaymas and buy goods from my father's store, who was a wholesale merchant and importer.

Q. 60. Then your father was engaged in merchandising at that time?

A. From the time he arrived there until he left Guaymas for California; the family went there first when he was in Europe, but his business was carried on for a few years after sixty-one.

Q. 61. What were the relations between Fernando Rodriguez and your father?

221 A. They were on friendly terms, acquainted and friendly.

[42]

Q. 62. Do you know whether Mr. Rodriguez was a man of means and good standing?

A. He was a man of very good standing, and a man of some means.

Q. 63. Did you see him at your father's place of business when a boy?

A. I recollect him well ; I can't say how many times ; I don't recollect.

Q. 64. Here matrix in the Algodones case is shown witness, and asked if he has ever seen that before, and where.

A. Yes, sir ; I have seen it here in the treasury department.

Q. 65. Have you ever made an examination of the signatures therein contained for the purpose ascertaining whether or not they are genuine?

A. I had occasion to see and compare this expediente and matrix with other expedientes and matrixs in the treasury department.

Q. 66. State whether or not, in your opinion, they are genuine.

A. I have not the least doubt that they are genuine.

Q. 67. Here testimonio is shown witness, and is asked if he has ever seen that before.

A. I have seen it before.

Q. 68. Do you know the signatures therein contained from your  
222 examination ? [43]

A. I have examined the signatures.

Q. 69. State whether or not, in your opinion, they are the genuine signatures of the person purporting to sign those documents.

A. Yes, sir ; they are.

Q. 70. Are you familiar with the seals used in the treasury department in the year 1838 ?

A. I know the seal only by comparison with other expedientes.

Q. 71. State whether or not they have the appearance of those on other documents made in that year.

A. It has, in my opinion.

Q. 72. Have you the law relating to the issue and destruction of stamp paper issued during that epoch ?

A. That epoch, yes ; that is not precisely the date, '38 ; but I have the law by which the paper was issued. I have the law ; it is dated November 23, 1826. This is a federal law.

Q. 73. I will ask you to state generally, what was the method of issuance and destruction of paper, and the use of paper.

A. At the expiration of the year for which the paper was issued, the private holder of the paper not used had the privilege to exchange it for new issue in thirty days, and according to article 21, of said law, it provides, "That all the surplus paper, after the year passed, should be  
223 destroyed in the presence of the auditor and the collector of finances, according to the law of [44] 26th of January, 1831, and for which purpose the governor's of the different departments of the States were encharged to collect all surplus paper, and to remit it to the general office in the City of Mexico, with great security. That it be the obligation of the official in charge of selling the paper to form and present to the respective governors, at the end of each month, an exact account of the moneys received and paid out, the balance on hand, and also a report of the sealed paper in stock, also of that which had been sold during the previous month." Article 18th of the law of 20th of January, 1831, which I have mentioned above, says : "That the seals will be kept in a vault with three keys, of which the superintendant will have one, the auditor one, and the other to the keeper of the seals ; and at the end of each fiscal year the seals will be destroyed in the presence of the auditor of the treasury department and said-mentioned employees."

Q. 74. Have you noticed the paper on which these documents—the expediente of the Algodones grant—is written?

A. Yes, sir.

Q. 75. State whether or not that is on the stamped paper used during the year or date upon which it purports to be issued.

224 A. The paper is the same that was used in other [45] expedientes—I see by examination, for the fiscal year of 1837 and '38.

Q. 76. Explain, from your examination and knowledge of the law, the possibilities of obtaining like paper in after years for the purpose of creating like instruments.

A. It would be a very difficult thing—almost impossible, and, in fact, impossible; and, I say, especially such a large amount of paper that has been used in the expediente of title in this case.

Q. 77. I will ask you how these seals are canceled when it becomes necessary to use them for other purposes, or are left blank without being used?

A. There is a provision that all books used in which accounts are kept shall have the first and last page certified by the official in charge to collect taxes for revenue, the number of pages, and by a rubric in intermediate.

Q. 78. So that when a book like this is created, there is a caption in the front page, conclusion on the last page, and at the same time each page is marked with a rubric, identifying that as being for the use of the official?

A. Yes, sir; and in the certificate on the first page it gives also the number of pages that the book contains; in this case, the book I have before me now is possessed of twenty-six pages, which corresponds  
225 to the certificate in the beginning. [46]

Q. 79. This is a book of the treasurer-general's office?

A. Yes, sir.

Q. 80. And the rubric used in that book would be the rubric of the same officials?

A. Yes, sir.

#### Examination by Justice MURRAY:

Q. 81. What power did the Federal Government, or General Government, of Mexico have over the property of the citizens in 1838?

A. No power whatever over the citizens; only so far compliance with the laws were concerned, &c., &c.

Q. 82. Suppose the land granted in 1838 to private citizens, did the General Government have any power over it; any control over it?

A. During this time that this grant was made, and after 1824, we were unsettled, and hardly knew where we were—under the central system sometimes, and then under the federal system, and these changes were so fast that by the time the State government concluded to act, and come over to the federal, it had been abrogated, and some of the States didn't adopt it at all.

Q. 83. I want to know, in the State of Sonora, what power had the General Government?

226 A. It had no power; section 11 of the act of August [47] '24 giving the right to the revenue from the sales of public lands to the States, only restricting to that of the central system, and that is a point I wish to tell you.

About the constitution, the question is whether the Government recognized this central system or not. My opinion, and that of the governor and others, is that it did not recognize it, because all the titles that were issued afterwards were issued exactly the same way, and reciting exactly the same laws, &c.

Adjourned until Tuesday, December 29, 1892.

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TUESDAY MORNING, *December 29, 1892.* [48]

Mr. GUILLARMO H. ROBINSON continued testifying, as follows :

Direct examination—continued.

By A. M. STEVENSON, Esquire :

Q. 84. Judge Robinson, I will ask you, if at any time, namely, April, 1838, of the sale or grant of the lands in this case to Fernando Rodriguez, the State of Sonora was acting as a free, independent, and sovereign State at the time of the grant ?

A. It was a free, independent, and sovereign State, and was so acting at the time of the grant in this case, in April, 1838.

Q. 85. If I have correctly understood your testimony and your construction of the colonization laws of the General Government of August 18, 1828, such laws applied only to the free granting of the lands for colonization purposes, and did not in any manner apply to the sale of lands by the State to individuals who possessed the means required by the State laws. Will you be good enough to state if this is correct ?

A. Perfectly correct.

Q. 86. Then, did the colonization laws of the General Government of August 18, 1824, place any limitation or restriction, so far as the amount of land that could be sold or granted to one individual is concerned, upon the State of Sonora, in selling land to individuals, [49] like the grant in this case ?

A. It had nothing to do with it at all.

Q. 87. You are familiar with the effort of the General Government to pledge the vacant lands of the Republic to the National Banks. Be good enough to explain the character and nature of that transaction.

A. The General Government pledged to the National Bank all the lands in the whole territory of the Republic for the purpose of repaying the indebtedness. There was a law enacted to that effect, the date of which is January 11th, 1837. Section 3rd of said law is : " All the real estate or national property which exists in all the territory of the Republic shall be pledged to the National Bank. " Then the law of April 17th, 1837, which formed the " Junta de Almonedas " for the purpose of having a supervision over the funds derived from such sales, and to be turned over to the National Bank.

Q. 88. Examine, if you please, this document, being a paper marked " Exhibit A, " and being a part of the testimony taken in this case in May last, and supposed to be a correspondence between the treasurer-general of the State of Sonora and the Supreme Government relating to the grant or sale of the land to Rodriguez, and state whether or not such paper is a recognition of this [50] grant by the General Government, or in fact an approval of the same ?

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A. If it is not an out and out recognition, there is a strong presumption, as can be noticed by the communication itself, and in which it gives the manner of giving these lands, and citing the laws of 17th of April and 7th of December, '37, and at the same time ordering that all titles in the possession of the National Bank agent at Sonora shall be returned to the treasury department.

Q. 89. Do you know who was the National Bank agent there?

A. Lawyer Manuel Marino Gaxiola.

Q. 90. From your familiarity with the history of this State, I will ask you to explain as best you can why, in your opinion, there was any correspondence between Mr. Rodriguez and your father with the Supreme Government relating to this particular grant?

A. On account of the different changes that had been going on between the central and federal systems.

Q. 91. Then as a matter of precaution to make the grant sure, and in order to secure the acknowledged legality of the expedient by either of the parties, in order to secure himself?

A. Yes, sir.

230 Q. 92. Judge Robinson, in the deposition of your father [51], taken in San Francisco, and now on file in this case, his testimony, which seems to have been copied, makes it appear that he testified in answer to one of the direct interrogatories propounded to him, as follows: "I knew Fernando Rodriguez in Hermosillo, Sonora, and in the port of Guaymas; I knew him since the year 1853." Again, in answer to another interrogatory, he testifies: "I received the original document expediente original from Fernando Rodriguez in 1847;" and in answer to a further interrogatory, "that Mr. Rodriguez handed him the expediente original at the time of selling the property to him," you will observe that there is a slight discrepancy in the testimony of your father relating to the time and year when his acquaintance with Mr. Rodriguez began. From your acquaintance with Mr. Rodriguez, and from your knowledge of your family history and the like, I will ask you to explain, if you please, this apparent discrepancy.

A. There is undoubtedly a mistake, because it is hardly likely that my father would have met Fernando Rodriguez after I did; from my recollection I must have been about eight years old when I first saw Rodriguez.

Q. 93. Then what in your judgment should this 1853 be?

231 A. I think my father, although I am not sure, met Mr. Rodriguez immediately on his return from Alamos in A. D. [52] 1833, and I think it should be 1833, as that was the time my father began residing in Guaymas.

Q. 94. Mr. Rodriguez was in business in Hermosillo and your father in the wholesale and importing business at Guaymas, and did they have business relations with each other?

A. Yes, sir. He knew Rodriguez, also, after my return from the United States in 1862 or '63.

Q. 95. Do you know the character of pens and inks used during the time that this grant was made? And if so please state the character of pens and their effect in writing.

A. Generally at that time and up to '50 and '54 we used to use quill pens, points cut with a penknife and sharpened according to the taste

of each writer, and the ink was homemade, made of brown sugar, old iron nails, and the bark of a tree called "huisache," and which made a very nice ink.

Cross-examination by Mr. WILL M. TIPTON :

Q. 96. Mr. Robinson, I want to call your attention in the original expediente of the title in the m'tter of the El Paso de los Algodones to the three signatures of Mendoza attached to the three orders of sale in that case, and found on the second page of leaf 14, both pages of 232 leaf 15 and the first page of leaf 17 of said expediente [53], and I would like to know whether you are familiar with these signatures?

A. Familiar with them by comparison.

Q. 97. Have you compared those signatures with the other signatures, which were admitted to be genuine signatures here?

A. Yes, sir; I have.

Q. 98. From what documents were the signatures from which you made the comparison?

A. In the archives of the treasury department.

Q. 99. How long ago did you make that comparison?

A. In May last—in May last with the expedientes in the treasury department.

Q. 100. Do you know what official position, if any, this man Mendoza occupied at that time of these three orders of sale?

A. From the document he was judge of the first instance in Arispe, in this State of Sonora.

Q. 101. What conclusion did you arrive at as to the genuineness of those three signatures?

A. It left no doubt at all as to the genuineness of them.

Q. 102. Are you directly or indirectly interested in the result of this suit?

A. Neither directly or indirectly.

Q. 103. Your father was at one time the owner of this property, was he not?

233 A. My father had the property transferred to him by the [54] Rodriguez family; afterwards he formed a company in California, called the Colorado Commercial and Land Company; afterwards, about a year afterwards, my father sold to Mr. E. M. Sanford, his interest.

Q. 104. Did your father purchase the entire interest of the heirs of Rodriguez?

A. Yes, sir.

Q. 105. At the time he made that purchase until he sold to the company which you referred to, he claimed to be the owner of this property?

A. He was the owner of the property up to the time the company was organized.

Examination by Justice SLUSS :

Q. 106. After the act of August 4, 1824, of the Republic was there any law requiring the sales made the authorities of the State to be approved by the authorities of the General Government?

A. Only in the epoch of the central system.

Q. 107. When was that?



A. First in '36, and then afterwards in '41, and off and on.

Q. 108. Can you state with certainty the periods covered by the central system?

234 A. The central system was declared in the Republic in [55] 1836—December 30, 1836, and the first organization of the Mexican territory into departments. This remained in force in Sonora until December, 1837, when General Urrea proclaimed against it, and ordered the State authorities to obey the constitution and the laws before the act of 30th of December, '36.

Q. 109. Who was he?

A. He was the governor of the department of Sonora under the central system, and in '37 he proclaimed against it; in December, '37, Congress met and the constitutional system went on.

Q. 110. By what act or authority was that done?

A. By force of arms of General Urrea.

Q. 111. How long did that condition continue?

A. Until after '41—until the '40s.

Q. 112. What happened then?

A. Urrea continued to be the governor after a short period, after which he asked for a leave of absence—taking charge of the constitutional government, Lieutenant-Governor Leonardo Escalantante, and this information can be found in the archives of the secretary of state department here.

Q. 113. Were the arms of General Urrea, arms of the Republic  
235 or the State of Sonora? [56]

A. You misconstrued my answer; there was no fighting.

Q. 114. In the fuss, then, General Urrea represented the State government and did not represent the General Government?

A. No, sir.

Q. 115. Was there any law directing the keeping of this book known as the Toma de Razon by the officials of the State by statutory enactment?

A. I will not be positive, sir; but I think the act of July 11th, 1834, regulates the keeping of a book called the Toma de Razon.

Q. 116. Was there any statutory law directing the manner of keeping the records of the expediente of the sale of lands in this State?

A. From time immemorial, and in the time of King, all these expedientes were kept as they are to-day, as can be seen in the archives in the treasury department of the documents of the same class, kept in the same manner.

Q. 117. Then I understand that the making of this expediente is a matter of ancient custom rather than statutory law?

A. Ancient custom and based, undoubtedly, on old Spanish laws.

Q. 118. Did any law of this State provide for the issuance of the original to parties of the testimonio?

236 A. Yes; the law of July 11th, 1824, in the part which refers to lands. [57]

Re-direct examination by Mr. E. M. STEVENSON:

Q. 119. When the State government refused to become a department of the General Government, and insisted in retaining its sovereign capacity, did it take such action by the reason of the constitution of the Republic declaring each of the States were free and independent States?

A. I can't state exactly what the proclamations were, but that exists in the archives of the secretary of state.

Q. 120. Was the right of the State of Sonora to sell lands of the character of those sold in this particular case ever questioned by the General Government or any other authority to your knowledge?

A. There were several laws enacted from time to time nullifying titles and grants given, but said laws were never taken any note of on account of these titles having been issued by officials authorized for the purpose, and thereby giving said laws that nullified those grants, retroactive effect, which, according to common law as well as the constitution, could not be.

Recross-examination by Mr. WILL M. TIPTON :

237 Q. 121. Do you know about how far it is from the city of [58] Arispe in this State to the junction of the Gila and Colorado rivers?

A. I have not the least idea.

Redirect examination by Mr. SANFORD :

Q. 122. Mr. Robinson, I will ask you to state whether or not, in any of these matrix's, wherever any entry is made, is not that the original record and evidence of the fact of such entry?

A. Yes sir; there is no other, except where money is paid, the entering in the book of accounts of the treasury.

Q. 123. Then when the entry is made in such books, are they not taken from the entries in the matrix; that is, of moneys paid as purchase money?

A. The document, by it, appears that money has been paid, in the expediente's and is a true copy of that in the book, and there are certificates that in a certain book a certain entry is found.

Witness excused.

DIEGO ESCALANTE, being first duly sworn on behalf of the petitioners, testified, in Spanish, as follows :

Hon. G. H. Robinson, interpreter.

Direct examination by E. M. SANFORD, Esquire:

238 Q. 1. Where do you live? [59]

A. Have lived at Hermosillo all my life.

Q. 2. What official position, if any, do you hold?

A. At present I am second official of the secretary of the state government, in charge of the statistics department.

Q. 3. State whether or not you are World's Fair Commissioner?

A. Yes, sir; I am for the State of Sonora appointed, and president of the commission in the State of Sonora.

Q. 4. Do you know Leonardo Escalante?

A. He was my father.

Q. 5. Do you know whether or not he was ever governor of Sonora at any time?

A. Yes, sir; he was vice-governor of the State, and acting governor of the State about 1838.

Q. 6. Please examine this document attached to the testimonio in the Algodones case and state whether or not you know the signature appended thereto?

A. This is the signature of my father; there is no doubt of it.

Q. 7. Was your father the governor of Sonora in 1838?

A. Yes, sir; he was vice-governor, but at that time he was acting governor in the absence of Governor Urrea.

Q. 8. Are you familiar with the archives and records of the various departments of the government of Sonora?

239 A. No, sir; I am not. I have only recently come into the secretaries' office, and I know very little of the [60] archives.

Q. 9. When did your father die?

A. In the spring of 1851, at San Francisco, California.

No cross-examination.

MANUEL FERREIRA, being first duly sworn on behalf of the petitioners, testified, in English, as follows:

Direct examination by E. M. SANFORD, Esquire:

Q. 1. Please state your name, residence, and occupation.

A. Manuel Ferriera; merchant; Hermosillo.

Q. 2. Do you hold any official position in the State of Sonora? If so, what position?

A. Vice-judge of the supreme court of the State.

Q. 3. How long have you held that position?

A. For eight years.

Q. 4. Are you familiar with the manner of selling or granting lands by this State, and have you any business of a personal nature relating to such matters?

A. Yes, sir; I am familiar with them.

Q. 5. Have you had in your business been from time to time connected with any grants of lands made in this State?

A. Yes, sir.

Q. 6. Have you had occasion to examine any of the records of the treasurer-general's office?

240 A. Yes, sir. [61]

Q. 7. Have you examined the record of the paper I now hand you, being the original expediente of the title in the Algodones grant?

A. No, sir; I have not; I have never seen it before.

Q. 8. Please examine that paper or document.

(Witness examines.)

Q. 9. From your knowledge of the manner of granting or selling lands in this State, do you recognize that document as being in the usual and ordinary form of such documents?

A. In my opinion it is in the usual form.

Q. 10. Would you say, from your knowledge of documents of this character, whether or not it is a genuine document?

A. I can say it is a genuine document.

Q. 11. Have you, in your experience as one of the judges, ever known of any grant of land made by the State of Sonora, the title of which was in the archives of the State, having ever been questioned by any authority as to their genuineness?

A. I have never heard it questioned.

No cross-examination.

VICTOR AQUILLAR, being first duly sworn on behalf of the petitioners, testified, in English, as follows :

241 By Mr. E. M. SANFORD : [62]

Q. 1. You have been examined already in this case as a witness ?

A. Yes, sir.

Q. 2. And you are treasurer-general of the State ?

A. Yes, sir.

Q. 3. I will ask you to examine paper marked Exhibit C, filed in this case on the 27th of May last, for the purpose of indentifying the signature of José de Aguilar therein. - Whose signature is that ?

A. My father's signature.

Q. 4. Was he governor of the State of Sonora at the time of signing that document ?

A. Yes, sir ; he was.

No cross-examination.

ROMAN CORRAL, being first duly sworn on behalf of the petitioner, testified, in Spanish, as follows :

Mr. , interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. Please state your name, age, and what, if any, official positions you hold in this State.

A. Roman Corral ; thirty-nine years old ; secretary of state ; member of the national Senate.

Q. How long have you held the position of secretary of state ?

242 A. He was secretary of state during the period of the year [63] '78 ; afterwards he left the secretaryship to go to Congress and returned to secretary in 1882.

Q. 3. Are you not now a member of the national senate ?

A. Yes, sir.

Q. 4. Please state how long you have been a member of the senate or a member of the Congress of the nation.

A. I have been a representative for three periods of two years, and have been reelected at the election of July of this year.

Q. 5. What position, if any, did you hold in the State of Sonora prior to the time when you first entered upon your duties as secretary of state.

A. I was State representative in the State of Sonora, and was afterwards secretary of state.

Q. 6. Have you had occasion to examine archives and records of the State of Sonora in the office of the treasurer-general ?

A. I have examined the archives of the treasurer-general's office, and particularly the archives of the secretary of state.

Q. 7. Have you made such examinations frequently or otherwise ?

A. Very frequent, almost every day.

Q. 8. In addition to the ordinary duties of your office, for what purpose have you made examinations of the public [64] records ?

243 A. I have studied the archives, and wrote an account of all the public administrations during General Torres' administration from 1883 to 1887, and was obliged to study the archives in order to get data to form this account, also for the object of writing a biography of General Pesquiere, who was governor here for many years.

Q. 9. In such examination of the records, did you become familiar with the signatures of José Justo Milla, José Maria Mendoza, Florencio Mendoza, Francisco Mendoza, José Carrillar, Manricio Carrillo, Leonardo Escalante, José D. Aguillar, Ignacio Pesqueira, as the same are found upon the public records and documents in th' several departments of this State government?

A. I am acquainted with some of these signatures better than others; I have seen them all in the documents that I have examined.

Q. 10. Are you well acquainted with the signatures of José Justo Milla, José Maria Mendoza, Leonardo Escalante, José D. Aguillar, Ignacio Escalante?

A. I am acquainted with them.

Q. 11. Examine, if you please, the paper that I now hand you, being the original expediente of title to the land granted to Fernando  
244 Rodriguez in this State in 1838, known as the El Paso de los Algodones grant, and State whether or [65] not that is a genuine expediente for the sale or grant of lands.

A. This expediente and survey of the Algodones land in favor of Fernando Rodriguez for five sitios of land and this expediente and survey of the land constitute the title to the same.

Q. 12. Are the signatures of the several officers that appear upon this expediente original, that you are familiar with, their true and genuine signatures?

A. Of those I am acquainted with, they are the genuine signatures of P Carrillo, Fernando Rodriguez, and José Justo Milla; those are genuine; the others I am not acquainted with.

Q. 13. Examine, if you please, the signature of Ignacio Pesqueira, on Exhibit D, filed in this case in May last, and ask him if that signature is his true and genuine signature.

A. Yes, sir.

Q. 14. Please examine Exhibit number B 2, filed in this case on December 22, 1879, by John Wasson, surveyor-general, and state if the signature of José Maria Mendoza thereto is his true and genuine signature.

A. Yes, sir.

Q. 15. I will ask you to examine Exhibit B 1, filed in this case on December 22, 1879, and on the 27th of May last, and state  
245 if the signature of José Maria Mendoza thereto is his [66] true and genuine signature.

A. Yes, sir.

Q. 16. Please examine Exhibit D, about which you have already testified, and state if the signature thereto of Jose Maria Mendoza is his true and genuine signature, and if the body of the instrument is in his handwriting?

A. Yes, sir; it is his signature and the body of the instrument is written by him.

Q. 17. Examine Exhibit C, filed in this case on the 27th of May, 1892, and state of the signature of Jose D. Aquillar is his true and genuine signature?

A. Yes, sir.

Q. 18. Please examine the signature of Leonardo Escalante, attached to the testimonio in this case, and state if that is his true and genuine signature?

A. Yes, sir; it is.

Q. 19. Please state whether or not the State of Sonora was in April, 1838, acting as a free, independent, and sovereign State and transacting its public business as such?

A. More or less from January, 1838, the State was a free and sovereign State, and formed a part of the Federal Mexican Republic, as it is now; it was a sovereign State for its local administration, but dependent  
246 upon the Federal Government for certain public affairs. [67]

Q. 20. Then the situation, so far as independence of the State and the manner of doing business, was the same in 1838 as it is now?

A. It was similar, but not entirely the same; because at that time it was governed by the federal constitution of 1824, and now is governed by the constitution of 1837, which is a little different from the other.

Cross-examination by Mr. WILL. M. TIPTON:

Q. 21. Did you ever see the expediente in the matter of the El Paso de los Algodones grant before to day?

A. I do not recollect of having seen it before, but I might have seen it during the examination of the different documents here when they were being arranged and put on file, two or three years ago, but if at that time I saw it I do not recollect it.

Q. 22. Then you have never made a critical examination and comparison of the signatures of Jose Justo Milla, Fernando Rodriguez, Moricio Carrillo, upon this expediente, with other signatures of these parties, which were admitted to be genuine, with a view to determining the genuineness of those on the Algodones expediente?

A. I say these signatures I have seen are genuine by the [68]  
247 recollection I have of the many signatures of these parties that I have seen on the different documents in the archives, but I have not made critical examination of these signatures I have seen with others held also as genuine, of these gentlemen with the exclusive object of determining if they are or not genuine.

Witness excused.

GUILLARMO H. ROBINSON recalled, on the part of the petitioners.

Direct examination by Mr. SANFORD:

Q. 124. I will ask you to please read the note found on the second page of leaf 51, and also the continuation on the first page of leaf 52, in the book known in this case as the Toma de Razon?

A. "Note:—The titles of lands that shall be given from this date on, will be signed and authenticated by the Mr. treasurer-general of the State, on account of the government of this department having declared itself to-day in favor of the federal institutions; establishing itself in consequence according to the private laws of the treasurer-general and doing  
248 away with the gefature superiora hacienda (chief of the federal treasury department in the State), and which was enacted by general decree of the 17th [69] of April last. Arispe 26th of December, 1837. Signed, Trelles."

Adjourned until Wednesday morning, November 30, 1892.



WEDNESDAY MORNING, *November 30th.*

JOSE MENDOZA, being first duly sworn on behalf of the petitioners, testified in Spanish, as follows :

Mr. Manuel Ferreira, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. State your name ?

A. Jose Mendoza.

Q. 2. What is your profession ?

A. Public officer, attorney for the poor people in the supreme court of the State.

Q. 3. Are you in any manner related to Jose Maria Mendoza, who was for many years treasurer-general of the State of Sonora ?

A. He was my uncle.

Q. 4. Are you acquainted with his signature ?

A. Yes, sir.

Q. 5. I will ask you to examine Exhibit D, filed in this case 249 on the 27th of May last, and state whether or not the body of that instrument is in the handwriting of Jose [70] Maria Mendoza, and if his signature thereto is true and genuine.

A. I know perfectly ; it is the writing and signature of my uncle.

Q. 6. I will ask you to examine expediente No. a, filed in this case 27th of May last, and state whether or not the signature of Jose Maria Mendoza thereto is his true and genuine signature.

A. It is.

Q. 7. I will ask you to examine Exhibit E, filed in this case on 27th of May last, and state whether or not the signature of Jose Maria Mendoza is his true and genuine signature.

A. Yes, sir ; it is.

No cross-examination.

EDUARDO CASTANEDA, being first duly sworn on behalf on the petitioners, testified in Spanish, as follows :

Hon. G. H. Robinson, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and where do you reside ?

A. Age, fifty-two ; lawyer ; residence, Hermosillo.

Q. 2. How long have you been in the practice of law ?

A. Since '62. I have practiced my profession in Flaxcala, 250 Durango, and Hermosillo. In my profession as a lawyer [71] I have held judicial positions, supreme court justice of the nation, judge of the first instance in the criminal branch in Durango and Hermosillo, president of the supreme court, justice of said Flascata ; fourth judge in th' criminal branch in the capital of the Republic, prosecuting attorney for the supreme court of Mexico, of the federal district in Mexico, and president of one of the halls of appeal of the same tribunal, and magistrate of the civil "cusacion," and the president of the supreme court and justice of this State of Sonora.

Q. 3. State if you have made a special examination of the laws relating to the sale or granting of lands by the State of Sonora since 1824 ; and, if so, state your knowledge thereof ?

A. I have, and the State of Sonora had ample legal power and authority to dispose of its public lands in the manner provided by its own laws; the reason is that the State of Sonora did not have its sovereignty and rights limited only as far as the authority and rights it delegated to the congress of the union, and this is proven by article first, second, 109, section 31 article 293, of the constitution of the State, made on the 21st of October, '25, sanctioned and promulgated on the 2nd of November, 1825.

251 This constitution was enacted for the State of Occidente, composed of the States of Sonora and Sinaloa. The [72] limitation of those rights are found in the laws of the federation, in the part which refers to lands, and found in the law of classification of rents for revenue dated 4th of August, 1824; that law does not name among the revenues of the Federal Government the revenue proceeding from the sale and products of the vacant lands, and consequently these lands belong to the State, according to article 11 of the same law. Said law, as can be seen in its article 9th and 10th, does not treat exclusively on taxes, but as well of the property belonging to the Federal Government, and one as well as the other are composed under the name of "rentas."

The State has always been exercising the authority to dispose of and legislate on the vacant lands without opposition from the Federal authorities, and this is proven by the laws enacted by the General Congress, in which, in an implicit manner, is recognized the authority that the States had to dispose of its public lands. "Decrete de 21 de Septiembre de 1824, sombre de Administracion de la Hacienda Publica y los Estados." Said decree places under the administration of the general commissaries the taxes and all the revenues of the property of the Federal Government, and

252 in articles four and five are there enumerated. And it is seen that there are not included the vacant [73] lands precisely, because they belonged to the States. The decree of 16th of November, 1824, arranges the admin'stration of the public treasury of the nation, and omits, absolutely, to say anything about vacant lands, notwithstanding, speaking and enumerating all other taxes and revenues. In virtue, therefore, of the authority that the State had to dispose of its vacant public lands, it issued several laws and amongst others that of July 11, 1834, and it is seen clearly the way that it disposed of the lands—to sell them. That in virtue of that authorization, and according to that law, the title of the El Paso de los Algodones was issued by the treasurer-general of the State of Sonora.

The only limitation that the States had to dispose of its public lands is that of not being authorized to colonize them, except under the basis that the decree of 18th of August, 1824, establishes; but this decree refers exclusively to colonization. By colonization, I mean to give them and to establish there what we understand a colony or union of individuals that come from other parts to settle. But that law did not prohibit absolutely the State to sell to us Mexicans any of that land. This is con-

253 firmed by the fact that the Congress of the Federation declared null some of the dispositions of the [74] State on colonization, notwithstanding it did not declare null the laws of the same State, in virtue of which it disposed of said vacant lands in other ways. (Decree of 21st of February, 1824, which declared null a decree of the general legislature of Coahuilla and Texas on account of having been enacted on

colonization. Decree of 14th of May, 1851, which declared null a decree of the legislature of this State of Sonora on colonization.) From these decrees deduction is made that the limitation on the State only refers to colonization, and that they could dispose of it in other ways—its public lands. That all this is confirmed by our public right, according to which no one doubts of the validity of the alienations as that of the Algodones—

(Here witness discontinues to allow the governeoe to testify.)

General LUIS E. TORRES, being first duly sworn on behalf of the petitioners, testified in English, as follows :

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your name, age, and residence ?

A. My name is Luis E. Torres ; my age is forty-nine years ;  
254 my residence actually, Hermosillo. I divide my time be[75]tween Hermosillo and exc. Lower California.

Q. 2. How long have you resided in Mexico ?

A. With the exception of a short trip abroad, I have always resided here.

Q. 3. What is your political office in the Republic of Mexico, and how long have you held it ?

A. My actual positions : Governor, and governor-elect of the State of Sonora, political chief and military commander by appointment from the Federal Government, in the northwest district, and, besides, I am senator, elected, to the National Congress.

Q. 4. How long have you held these positions, and for what period ?

A. From January, 1888, with the exception of my office of senator, of which I am now on my second period. Of course, my election as governor of Sonora dates from last year's election. I took the office on the first of September of last year—that is my last election governor but I have been governor of the State on previous periods.

Q. 5. How long have you held public offices in this State or Republic, and what periods ?

A. In the State of Sonora from '79.

Q. 6. As such officer are you familiar or not with the various archives of the departments in this State ?

255 A. Only through my officers, not personally. [76]

Q. 7. Have you seen various archives or expedientes of title in the archives of your State ?

A. I have seen some.

Q. 8. You may take this expediente in the Algodones case and state whether or not that is an original record in the archives of this State.

(Witness examines closely.)

A. I think so.

Q. 9. From your knowledge of the manner of doing business in this State, and your acquaintance with the archives of the same and the records, I will ask you, in your judgement, the document you have just examined, namely, the matriz in the Algodones grant, is a true and genuine document ?

A. Yes, sir ; I think it is.

Cross-examination by WILL M. TIPTON, Esq. :

Q. 10. General Torres, when did you first see the expediente in this case?

A. Just now.

Q. 11. Are you familiar with the signature of Jose Justo Milla?

A. No, sir.

Q. 12. Have you ever made any comparison of the signatures  
256 of any of the officers who took part in the proceedings relating to the granting of that land, with a view to ascertaining the genuineness of their signatures?

A. I have not.

The governor excused.

EDUARDO CASTANEDA, heretofore examined—continued (from page 74) :

A. — were made by the authorities of the States, under the federal system by virtue of its own powers. (For instance, article 2nd of the decree of 3rd of December, 1855.) The said title of algodones is issued in entire conformity with the provisions of said law of the State of the year 1834. The understanding that the Huntas de Almonedas, or board of Almonedas in charge to make sales, met in virtue of these provisions of the Spanish laws that remained in force, in accordance to the same law of 1834, in order that it did not pass to the new institutions adopted by the State.

The decree of 25th of November, 1853, affected in no way the validity of titles issued by the States under the federal system that never had application, and neither the very tribunals existing in the same epoch in which the law was issued, never would have applied to it, as to the  
257 titles issued by the States according to its own laws [78], because said decree contains provisions with retroactive effect, and provisions with retroactive effect do not apply, nor have they been applied by the Mexican tribunals, because they are null—*ipso jure*. According to civil law in vigor in the epoch of the Spanish Government, and in conformity to the constitutional laws of the years 1824, 1836, and 1843, according to which the inhabitants of this country have the guarantee of not being tried by laws, *ex post facto*. For this reason there can be no doubt that the decree of the 25th of November, 1853, does not affect the validity of the titles issued in the epoch of the federation.

In conclusion, this title is entirely valid and has been issued legally by the authorities of the State in April, 1838.

Cross-examination by Mr. WILL. M. TIPTON :

Q. 4. Was the government of the State of Sonora at any time after its establishment changed to a departmental government, or, in other words, has the State of Sonora at any time, to your knowledge, been a department of the Republic?

A. It has been made a department of the Republic in some time.  
258 Q. 5. What date? [79]

A. From 1836 to 1837 it was a department; it was also a department from '53 to '54, but at the time this title was issued it was a State.

## Examination by Justice SLUSS :

Q. 6. I call your attention to the expression in article 3 of the law of August 18, 1824, as follows: "conforming themselves to the regulations established in this law," and ask you, in your opinion, whether that would include the provision of section 11, to the effect that no person should be permitted to receive more than eleven square leagues of land?

A. This law refers exclusively to colonization; that is to say, it prohibited the States to give more than that expressed in article 12 to the colonists that come to settle the vacant lands, but it did not limit the authorization or power which the States had according to their own laws to sell to any Mexican a large extension of land.

Q. 7. In view of the opinion you have given what is your construction of the provision of section 9, to the effect that preference should be given in the disposition to Mexican citizens?

A. This law, as I have already expressed, refers to colonization, and in article 9th refers to the preference that shall be given to the Mexican citizens when they shall [80] have come to form colonies in the State of Sonora, or any other State.

Q. 8. Is it not a fact that the title to all the vacant lands as between the State and the Federal Government was originally vested in the Federal Government?

A. From the moment that the nation entered into the federal system that right originally belonged to the States as owners of their own territory, in the quality of free, independant, and sovereign States, with no further limitation than the powers and rights delegated by the States to the Congress of the Union.

Q. 9. By what instrument were those powers and rights delegated to the Federal Government?

A. By the federal constitution and also by the laws enacted by the constitutive Congress, among which it is found that of August 4, 1824, in the part of which refers to lands, and that of the constitution of the State, "section" 16th, article 293, page 84, which says: "The revenue which the Federal Government did not reserve for itself by decree of classification of 4th of August, 1824, are those that, until this date, have formed the elements of which the treasury of the State is composed of." The date of this constitution is 31st of October, 1825, and published on 260 the 2d of November of the same year. [81]

Q. Had the State the authority to absolutely alienate its land without the consent of the Federal Government?

A. It had.

Witness excused.

BARTOLOMÉ ROCHIN, heretofore examined, recalled, and continued.

Hon. G. H. Robinson, interpreter.

Direct examination by E. M. SANFORD, Esquire:

Q. 44. Was Manuel Telles treasurer-general of the State of Sonora in July, 1881?

A. Yes, sir.

Cross-examination by Mr. WILL. M. TIPTON :

Q. 45. How long have you lived in Hermosillo ?

A. Five years.

Q. 46. Were you employed in the office of the treasurer-general of the State of Sonora at any time prior to your appointment to your present position ?

A. I was employed in the law department, but not in the treasury department—and as a judge in Arispe.

Q. 47. Mr. Rochin, please examine expediente in the matter of 261 the de los Positos, and state whether there is anything [82] in that expediente to show that the lands were ever offered for sale and sold by the government of the State of Sonora, as the lands are alleged to have been in the Algodones case ?

A. That is not the same as that of the Algodones, because the land was not petitioned for, but merely petitioned to have it remeasured on account of the original title having been lost.

Q. 48. Then, so far as you know, Mr. Rochin, the title to the lands in the question in the Rancho de los Positos was perfected at some time prior to these proceedings, and this was simply a petition asking for lands to be surveyed ?

A. Yes, sir.

Q. 49. Then you would not expect to find an entry in the book of Toma de Razon for that ranch, would you ?

A. Why not ? Because, by the simple petition of there measurement the title is perfected.

Q. 50. Is there any other book of Toma de Razon on land titles in the office of the treasurer-general of Sonora, covering a portion of 1838, other than the book which was presented to you on your examination in chief ?

A. None other ; I do not know of any other book.

Q. 51. Did you ever see any other book of Toma de Razon 262 covering any portion of 1838 since you have been connected with this office ?

A. No, sir.

Q. 52. Do you know how many grants were made by the State of Sonora during the year 1838 ?

A. I do not.

Q. 53. Didn't I understand you to say in your examination in chief that the book of Toma de Razon for April, 1838, was missing from this office ?

A. Yes, sir. I repeat again what I have said, that I know that the book of Toma de Razon corresponding to the month of April, 1838, was lost from this office.

Q. 54. Was it the custom to keep a book, Toma de Razon, for each month in the year ?

A. No, sir ; because in many of the expedientes made, have the notation of Toma de Razon at the bottom of them, and which I can show many of them, in which it says that the title was issued.

Q. 55. Do you know, of your own personal knowledge, that there ever was a book of Toma de Razon for the month of April, 1838, in the office of the treasurer-general of this State ?



A. I am not able to say, because when I received the archives the book did not exist here.

Q. 56. Please examine book *Toma de Razon*, beginning in the year 1831 and concluding in the year 1840, and state whether or not it is a fact that the most of that book is written upon stamped paper, bearing the year 1831 and 1832, [84] and a portion of it on paper bearing no stamp?

A. Precisely; the greater part of the book is written upon sealed paper, and the latter part of the book is on the common white paper without stamp.

Q. 57. Please examine paper referred to by you in your examination in chief, and said to have been written by Manuel Telles, and state whether that paper is signed by him or any one else.

A. I have already examined it; it is not signed by anybody because it is a "parrador" which is found in the archives of the treasury department.

Q. 58. Does it bear any date?

A. It is July, 1881.

Q. 59. Is there a seal upon it?

A. It has not.

Q. 60. When did you first see that paper in the treasurer-general's office?

A. I found it while looking for some expedientes in June or July of this year.

Redirect examination, E. M. SANFORD, esquire.

Q. 61. When does this document have the appearance of having been made up, signed by Jose Maria Mendoza and annexed [85] here on leaf 68 and signed by Jose Maria Mendoza?

A. Here in the first page of the book, take note of the titles issued.

Q. 62. Was it not then the case, the note or toma of the issuance of the title was written upon the original expediente?

A. I have found several expedientes that have that notation upon them.

Q. 63. Examine the original expediente in the Algodones case and state whether that (indicating) or not is the original note or "toma" of the issuance of the grant?

A. The note of the *Toma de Razon* in the expediente before me is here —on leaf 17, second page.

Q. 64. Is that the original entry or note of the issuance of the grant in the Algodones case?

A. This the original *Toma de Razon* (note) in the original expediente of the Algodones grant.

Q. 65. This note or *Toma de Razon* of the original expediente of the title in this case is upon the original expediente or the second leaf of page 17?

A. Yes, sir; and reads as follows:

(Interpreter reads:) "On the 12th day of April, 1838, there was issued by this treasurer-general in favor of Mr. Fernando Rodrigues, the corresponding title of five sitios of land, of farming land, which is

comprised in the place [86] called El Paso de Los Algodones, on the river Colorado and in front of the confluence of this with the Gila, and on which this expediente refers to.

(Signed)

MILLA.

Witness excused.

This was all the testimony taken at Hermosillo, Sonora.

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*Depositions taken at Guaymas, Sonora.* [87]

DECEMBER 1, 1892.

Mr. J. A. FORBES, witness heretofore examined, recalled on cross-examination.

By WILL. M. TIPTON :

Q. 55. Please state when you first saw the original expediente in the Algodones case in the office of the treasurer-general of the State of Sonora?

A. On the day I arrived at Hermosillo.

Q. 56. And is that the same day on which you have your testimony on your examination in chief?

A. The day before.

Q. 57. Are you familiar with the signature of Jose Justo Milla?

A. Not any more than by examining the paper.

Q. 58. Then do I understand that you never have seen his signature until you saw it on the expediente of the Algodones case?

A. Yes, sir.

Q. 59. Is it not true that your opinion as to the genuineness of the signature of Jose Justo Milla in the expediente of the Algodones case is based rather upon the fact that you believed that a presumption of the genuineness of those signatures arose from the expediente being  
267 found in the public archives, rather than upon any examination or comparison [88] that you have made with others admitted to be genuine?

A. My opinion concerning the genuineness of the signature of Jose Justo Milla, as it appears on the expediente of the El Paso de los Algodones land grant, is based upon the fact that other signatures of the same person found in the archives in other expedientes, which are not questioned as to their genuineness, were in the same handwriting, and also because I consider all signatures found in the Government archives, which are reputed and considered by the Government authorities to be genuine, also genuine.

Witness excused.

DECEMBER 2, 1892.

LEONCILAS ENCINAS, being first duly sworn on behalf of the petitioners, testified in Spanish as follows :

Mr. H. Haile, interpreter.

Direct examination by E. M. SANFORD, Esquire :

Q. 1. What is your age and place of residence?

A. Fifty-nine years ; residence, district of Altar, Sonora, Mexico ; business, a cattleman.

Q. 2. Were you acquainted with Jaun Jose Encinas during his  
268 lifetime? [89]

A. Yes, sir; he was my father.

Q. 3. When did he die?

A. On the 8th of January, 1865.

Q. 4. Are you acquainted with his handwriting?

A. Yes, sir; and his signature, also.

Q. 5. I will ask you to examine Exhibit B, filed in this case on the  
27th of May, last, and state whether or not the instrument is in the hand-  
writing of your father, Jaun Jose Encinas?

A. Yes, sir; it is.

Q. 6. Is the signature of Juan Jose Encinas thereto your father's true  
and genuine signature?

A. Yes, sir.

Q. 7. Will you state if you are acquainted with the handwriting of  
Jose Maria Mendoza?

A. I knew him and knew his handwriting.

Q. 8. I will ask you to examine the paper marked Exhibit D, filed  
in this case on the 27th of May, last, and state whether that paper, or a  
page thereof, is in the handwriting of Jose Maria Mendoza, and if his  
signature thereto is his true and genuine signature?

A. Yes, sir; it is.

Q. 9. I will ask you to examine the paper marked Exhibit E,  
269 filed in this case on the 27th of May, last, and state whether or  
not the signature of Jose Maria Mendoza is [90] his true and gen-  
uine signature?

A. It is.

Q. 10. I will ask you to examine the paper marked Exhibit A, filed  
in this case on the 27th of May, last, and state whether the signature of  
Jose Maria Mendoza is his true and genuine signature?

A. Yes, sir.

Q. 11. Are you acquainted with the handwriting of Ignacio Perqueira?

A. Yes, sir.

Q. 12. I will ask you to examine the signature attached to the paper  
marked Exhibit D, filed in this case on the 27th of May, last, and  
state whether or not the signature of I. Pesqueira thereto is his true and  
genuine signature?

A. Yes, sir; it is.

Q. 13. Please state whether or not the writing above the signature and  
on the page is in the handwriting of Governor Pesqueira?

A. I am not positive about that.

No cross-examination.

AUGUSTU BUSTAMENTE, being first duly sworn, testified in Spanish  
as follows:

270 Direct examination by E. M. SANFORD, Esquire: [91]

Q. 1. State your age, residence, and occupation.

A. Sixty years old; residence, Guaymas; business, a merchant.

Q. 2. How long have you lived in Sonora?

A. Since I was born.

Q. 3. What, if any, official positions have you held in this State?

A. I have held none.

Q. 4. Did you know Governor Pesqueira?

A. Yes.

Q. 5. Are you acquainted with his handwriting?

A. I have seen it many times.

Q. 6. Please examine Exhibit D, filed in this case on the 27th of May, 1892, and state whether or not any portion of that document, on the last page, is in the handwriting of Mr. Pesqueira; and, if so, what portion?

A. I think that is Mr. Pesqueira's signature. It is the same as all his signatures.

Q. 7. Are you acquainted with the signature of Governor Aguillar?

A. I have seen it many times.

Q. 8. Please examine Exhibit C, filed in this case on the 27th of May, 1892, and state in whose handwriting the words Jose D. Aguillar are written?

A. It is the same as in the case of Mr. Pesqueira's signature.  
271 I think it is Aguillar's signature. [92]

Q. 9. Was Jose D. Aguillar a relative of the founder of this mercantile house?

A. Yes, sir; he was a brother.

Q. 10. Are you acquainted with the handwriting of Jose Maria Mendoza; and, if so—

A. I have seen it in several documents, but I am not perfectly acquainted with it.

No cross-examination.

This was all the testimony.

It is hereby stipulated and agreed by and between the parties hereto that the testimony of the several witnesses who have testified and whose testimony has been taken by L. F. Parker, jr., the official stenographer of this court, in shorthand, may be extended in longhand, or on the type-writer by said stenographer, and when so extended and authenticated by him, the same shall be filed and considered as a part of the testimony in this case, without the witnesses so testifying signing the same, and there shall be no objection made by either party on account of the testimony not being signed by the witnesses.

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*Certificate of reporter.* [93]

I hereby certify that the above and foregoing is a true and correct translation of my shorthand notes of the testimony of Bartolome Rochin, J. A. Forbes, G. H. Robinson, Diego Escalante, Manule Ferreira, Victor Aguillar, Roman Corral, Jose Mendoza, Eduardo Castaneda, Luis E. Torres, Leoncillas Encinas, and Augustu Bustamente, taken at the cities of Hermosillo and Guaymas, State of Sonora, Republic of Mexico, on the dates above stated, as given to me by the several interpreters.

LUMAN F. PARKER, JR.,

*Official Stenographer, Court of Private Land Claims.*

Which said exhibit bears the following endorsements:

"Depositions in the Algodones case, taken at Hermosillo and Guaymas, Mexico, on the 26th, 28th, 29th, and 30th of November, and 1st and 3rd of December, A. D. 1892. Filed in my office this 12th day of December, A. D. 1892. James H. Reeder, clerk; I. L. Chaves, deputy."

273 Mr. STEVENSON. Also offer title page of plaintiff's Exhibit A 1, introduced and referred to in "Q 16" of the deposition of B. Rochin, taken at Hermosillo, Mexico, on the 26th of November last; also so much of it as refers to the testimonio in this case, the grant made to Rodriguez. Petitioner's Exhibit A 1.

#### EXHIBIT A 1.

The portions of said exhibit introduced are in Spanish, the translation of which is as follows: (Title page.) Review of the titles and expedientes of lands of the States of Sonora and Sinaloa, which exist in the archives of the general treasury of the State of Sonora. State print. Hermosillo, 1889.

To which exhibit objection was made by the United States that it was incompetent and immaterial, because it purports to be made in 1889, of archives then in said office, consequently is not binding on this Government.

The portion of said book which refers to the El Paso de los Algodones grant is found on page 86 thereof, being the third paragraph on said page, and is in Spanish; the translation of which is as follows:

Pasco de los Algodones—(rancho of)—State of Sonora. At the confluence of the Gila and Colorado rivers. Five sitios of land registered in 1838 by Don Fernando Rodriguez, resident of Hermosillo, to whom the respective title was issued.

To which the same objection as above was entered by the United States.

Mr. STEVENSON. I offer law—

Mr. REYNOLDS, U. S. attorney. I object—

By the COURT. The court will allow the laws to go in, subject to objection.

Mr. REYNOLDS, U. S. attorney. Enter an objection to the introduction of the law, because the court will take judicial notice thereof, and therefore it is not a question of fact in the case.

By the COURT. The same ruling will be entered.

Mr. STEVENSON. We offer copy and translation of law number twenty-six (26) of July 11, 1834, of the State of Sonora. (Petitioner's Exhibit S.)

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#### EXHIBIT S.

Which said translation of said exhibit is as follows:

The Governor of the State of Sonora to all its inhabitants:

Know that the congress of the aforesaid State has decreed the following:  
Number 26. The Congress of the State of Sonora decrees the following:

*Organic law and provisional regulation for the revenues of the State of Sonora.*

#### CHAPTER IX.

*Section first.*—On the revenues of the State and the administrative method thereof.

ART. 53. The taxes and revenues established in the State are:

1. That of liguors.
2. That on the transfer and sale of lands.

3. The recording of titles in the transfer of estates.
4. That of excises.
5. The tax on sealed papers.
6. That on tobaccos.
7. The duty on consumption of foreign articles.
8. That of village licenses.
9. That of branding irons.
10. The duty on assays and a fifth of the gold and silver.
- 276 11. That of coinage and reduction upon the gold and silver which is exported.
12. Tonnage duty on foreign vessels.
13. The duty of one-fifth on pearls.
14. The revenue from succession in every kind of extestate property without legitimate heirs.

*Section second.*—Administrative method of the revenues of the State.—  
Liquors.

ART. 54. Six months before the license has expired (five years or less) of the license of liquors, of other commodities hereinafter to be enumerated, which form a part of the revenues of the State, the treasurer-general shall cause notice to be made th'ough the chief judges of the expiration of licenses for thirty consecutive days, so that those interested may make their bids for license. The time of publication being concluded, the bidder or bidders are cited to appear before the treasurer of the three last days of sale, and the proceedings are transmitted to this office.

ART. 55. The public sales shall be held on three consecutive days, according to the previous public notices. The board shall consist of the treasurer, who shall be its president, of the chief judge, and of the administrator of revenues.

ART. 56. The highest bid shall be ascertained in accordance with the regulation in the last part of article 29 of this law.

277 *Section third.*—On the sale of land.

ART. 57. The individual who may need of a piece of land for cattle or horses, or any other use, shall appear before the treasurer-general and register his request in the name of the State. He must be accompanied by three impartial witnesses of approved fitness, in order that he *he* may prove himself to be possessed of sufficient property to be termed a cattle-breeder. This must be done to the satisfaction of the treasurer, who can require the presence of further witnesses, or use such other means, and at such time as in his estimation convenient to set at the truth, and carry out the purpose of this article.

ART. 58. To no one who is not a criador (breeder) can be given more than four sitios (ranches), but to those on account of their abundance of property need more land the treasurer shall concede as much only as they may need, preceding this action by the acquisition of information according to the foregoing article, assuring himself, by such measures as may be necessary to his judgement, of the truth in the matter before making the special concession, to the end that those *those* interested may have no part in the proceedings which he undertakes to fulfill the object of this law.



ART. 59. The treasurer, in continuation, shall, in considering the interests of registrants of land, be entitled to recommend to the judges surveyors for the measurement of the land, on account of special integrity or skill.

278 ART. 60. The treasurer, as immediate chief of all the revenue, shall make the sales and issue the titles.

ART. 61. Those who occupy land, who have registered and had a survey made, but who have not yet procured a title, shall present themselves before the treasurer-general within the time specified by bill number ten of the 30th of May of the current year. The titles of the ranches of the proprietors who do not confirm with this regulation shall be invalid and liable to confiscation, if they do not anticipate the loss of their title in the term of court when the matter comes up, giving reasons in writing for the cease of their dereliction to the subdelegate or judge before whom they appear and make proper disbursements.

ART. 62. The treasurer shall give due notice at the time which appears to him opportune, and as soon as he had done this he shall make over the proceedings to the fiscal promotor (attorney-general) in order that the latter may determine upon the most convenient method for the taxation of those interested, and for the public treasury.

ART. 63. It is the duty of owners of sitios (ranches) to place upon the boundary lines of their estates landmarks of stone, as ordered by the statutes, as soon as they are in possession of their estates; and if within three months, counting from the date that they received their title, they have not complied with this regulation, they shall incur a penalty of \$25,

279 which they shall pay to the judge for the public funds, who moreover shall cause the said landmarks to be constructed at the cost of the said proprietors.

*Section four.—On the taxes upon property.*

ART. 64. The valuation of each dry ranch, which can serve only for pasturage, shall be \$15; for those on which water can be obtained from wells, and which have meadow land, wood, etc., \$40; and without these adjuncts, \$35; for those which have springs or river, whether dry or otherwise, \$70 and \$80, those farms which contain grain-bearing land and are very fertile.

ART. 65. These valuations are the minimum on estate, and can on no account be rebated.

*Section five.—Taxes on surveyors.*

ART. 66. The surveyors shall have a tax of \$25 for the measurement of a ranch. For the measurement of two for the same individual, \$37.50. For that of three ranches for the same owner, \$50; for that of four, ditto, \$62.50.

ART. 67. When the surveyor measures several ranches, each for a different person, each registrant shall be taxed \$25.

ART. 68. The surveying, auditing, and assessing officials shall be paid by the registrant at the rate of fifty cents daily.

ART. 69. For notices and legal proceedings from beginning to end, \$25 shall be paid. The sealed papers shall be at the cost of those interested.

*Section six.—Tax on the final public sale.*

280 ART. 70. For the three public notices of the public sale there shall be paid six dollars for the public treasury ; for the attendance of the fiscal promotor, \$3 ; for the printer and publisher, \$2. The valuation of the title shall be \$30. The sealed paper is at the cost of those interested, but there shall be no extra charge for the ceremonial business customary in final sales.

*Section seven.—General regulations upon the transfer of estates.*

ART. 72. For the assessment of valuation above that minimum which the law provides, the surveyor shall name persons totally impartial in relation to those interested, and after the customary oath has been imposed, they shall proceed to fulfill their mission, estimating the greater or lesser fertility of the land, its locality, and other circumstances, to give it the value which it justly merits.

ART. 73. For the reason that land surveyors ought to have a practical knowledge of the lands which they measure, it is on their responsibility that the valuations are regulated precisely according to the conditions which appear in the foregoing article, and the conditions which are expressed in the 64th article of this law.

ART. 74. Every commissioner of surveying has as a duty to cite parties before him to meet the proprietors of adjoining lands, in order that their respective titles and boundaries may be approved. To this effect  
281 he will notify them or their agents to appear before him at a certain day, and if they do not appear on the day specified, without justification or legitimate cause, the land surveyor shall proceed to carry out his duty, taking care not to lean to either side in the controversy. The costs shall entail to those whose claims do not coincide with the decision of the surveyor.

ART. 75. The notices of the land to be measured shall be made public by the land surveyor in the town to whose jurisdiction the matter pertains.

ART. 76. If, on any account, the publication can not be published in the manner designated by the foregoing article, they can then be published in some other town, provided that it be not further than necessary from the respective locality.

ART. 77. If the person desiring to make proof can not do so on account of some personal infirmity or inconvenience which cannot be removed, the commissioner referred to shall be paid fifty cents per league for coming and going to the said place.

ART. 78. It is the duty of the treasurer to give to the land surveyors all the instructions that he can, formularies for measurement, and everything that will tend to better instruct them in their work ; also to expedite the dispatch of confiscated registrations and titles of exchange without permitting delay or license to do injury to the parties concerned.

ARISPE, July 11, 1834.

Attached to said translation is the following certificate :

282 STATE OF COLORADO,  
County of Arapahoe, ss:

I, E. Curtis Hill, of lawful age, being duly sworn, depose and say that the foregoing is a correct interpretation from the Spanish of the annexed Spanish document, being a decree of the congress of the State of Sonora, No. 26.

E. CURTIS HILL.

Subscribed and sworn to before me this 6th day of June A. D., 1892.

[SEAL.]

CHARLES A. BERDEL,  
Notary Public.

My commission expires March 14, 1895.

Which said exhibit bears the following endorsements: Copy of part of the State law of Sonora, Mexico, No. 26, July 11, 1834, Ex. S. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18th, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

Mr. STEVENSON. I offer a copy of chapter three of the same law, detached from the former offered. Petitioner's Exhibit T.

#### EXHIBIT T.

283 Which said exhibit is in the Spanish language; the translation thereof is as follows:

The governor of the State of Sonora—to all the inhabitants thereof:

Know ye, that the congress of said State has decreed the following, No. 26:

The congress of the State of Sonora decrees the following

*Organic law and provisional regulation for the treasury of the State of Sonora.*

#### CHAPTER THREE.

*Section first.*—The auditor of the treasury.

ART. 35. This employee is the second head of the office, and his duties those this law designates.

36. In order to be auditor the same conditions are necessary as article 5 provides for the treasurer. He shall have a salary of one thousand five hundred dollars per annum, and he shall give a bond for his management, as stated in the chapter on general provisions.

Temporary absences or impediments of the treasurer shall be covered by the auditor in regular order.

ARISPE, July 11, 1834.

Which said exhibit bears the following endorsements: Copy of 284 law, No. 26, of the State of Sonora, Mexico, July 11, 1834. Ex. T. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

CLARENCE KEY, being duly sworn, testified on behalf of petitioner, in English, as follows:

Direct examination by A. M. STEVENSON, Esq.:

Q. State your name, residence, and occupation.

A. Clarence Key; more than twenty-one years; translator; residence, Santa Fe.

Q. Are you acquainted with and familiar with the Spanish language and translate Spanish into English and English into Spanish?

A. Yes, sir.

Q. State what experience you have had in matters of this kind?

A. About twenty years.

(Mr. Reynolds, U. S. attorney, admits that Mr. Key is a thorough and experienced Spanish scholar, and competent to translate the Spanish language into the English and the English language into the Spanish.)

Q. Examine this paper that I now hand you and state what it is?

A. It is extracts from the political constitution of the free State of Occidente, decreed and sanctioned by its congress in the year 1825. The translation contains section 1 entire, articles seven and eight of section second, article one hundred and nine of section eight, and article two hundred and ninety-three of section sixteen.

Q. I will ask you if this is a correct translation of the constitution of the States of Sinaloa and Sonora as it was promulgated?

A. It is a true translation of those portions of the constitution of the State of Occidente.

Q. What composed the State of Occidente?

A. States of Sonora and Sinaloa.

Q. Was this translation made by you?

A. Yes, sir.

Mr. STEVENSON. We offer that in evidence.

(Petitioner's Exhibit U.)

#### EXHIBIT U.

Which said exhibit is in the words and figures following, to wit:

Political constitution of the free State of Occident, decreed and sanctioned by its congress in the year 1825.

Fuerte: Government printing office, in charge of the citizen J. Felipe Gomez.

No one shall reprint this constitution without permission of the honorable congress of the State.

286 The governor in charge of the free State of Occident to all its inhabitants:

Know ye, that the honorable constituent congress of the same has decreed and sanctioned the following political constitution of the free State of Occident.

The representatives of the free and sovereign State of Occident assembled in constituent congress with the object of fulfilling the law of its institu-

tion, and invoking the Supreme Author and Legislator for guidance, decree and sanction the following :

*Political constitution for its internal government.*

*Section first.*—Of the State, its territory and religion.

ARTICLE 1. The State of Occident and its territory is composed of all the towns embraced by that which was formerly called the intendency and political government of Sonora and Sinaloa. A constitutional law shall fix its limits.

2. In that which exclusively pertains to its internal government it is free, independent, and sovereign; and in that relating to the Mexican federation, the State delegates its powers and rights to the congress of the union.

3. For its better order it is divided into the five following departments :  
First. That of Arispe, composed of the district of the same name, and that of Oposura and Altar.

Second. That of Horcasitas includes the district of the same name, that of Ostimuri and Pitic.

Third. That of Fuerte, composed of the district of the same name, and Alamos and Sinaloa.

287 Fourth. That of Culiacan includes that of the same name and Colala.

Fifth. That of San Sebastian, composed of that of the same name, Rosario and San Ignacio de Piastia. The law of January 19 last is subject to this designation of limits.

4. It is the obligation of the State to protect by wise and just laws the equality, liberty, property, and security of all its inhabitants, although they may be foreigners and transients. Wherefore slavery is absolutely prohibited throughout its territory, as well as the traffic or sale of Indians of the barbarous tribes, and those who are now in servitude by reason of that unjust traffic are free as well as the slaves.

5. The constitutional congress will by law determine the indemnity which the State shall make, when its circumstances will permit, to those who, at the publication of this constitution, shall hold slaves.

6. The religion of the State is the Roman Catholic Apostolic without tolerance of any other. In that which relates to the expenses of the cult, the laws in force will govern so *land* as the nation by the proper means and in conformity with that which is provided in the general constitution shall not make any other disposition; it being the duty of the State to protect and preserve it in all cases by just and beneficent laws.

*Section second.*—Of the government of the State.

288 7. The government of the State of Occident is republican, representative, popular, federal. There shall not be in it hereditary offices nor privileges.

8. The general power of the State shall never be placed in any one person or corporation.

\* \* \* \* \*

*Section eighth.*—Of the powers of the congress and its permanent committee.

109. The powers of congress are :

First. To prescribe the laws relating t' the administration and internal government of the State in all their branches; to interpret them, to elucidate, suspend, or abrogate them.

Second. To watch incessantly over the preservation of the rights, civil and political, of the inhabitants of the State, and to promote by all means in its power the general prosperity.

Third. To make the codes, civil and criminal, of the special legislation of the State, under a clear and well-combined plan.

Fourth. To canvass the votes cast in the departmental electoral meetings by the citizens for governor, vice-governor, and councillors of the State by popular nomination, in the manner which will be hereafter expressed.

Fifth. To decide the ties which may occur in said nomination between two or more persons.

Sixth. To resolve or decide all doubts which may arise in said elections, and on the condition of those elected.

Seventh. To qualify the causes which may be alleged for not  
289 filling said offices, and to decide that which it believes to be proper.

Eighth. To declare when there is cause for bringing suit for common offences, as well as for official offences, against the deputies, the governor, his secretary, ministers of the court of justice, and the general treasurer.

Ninth. To make like declaration against other public functionaries for infractions of the constitution.

Tenth. To examine, approve or disapprove the accounts of all the public funds of the State.

Eleventh. To fix each year on estimate furnished by the government the expenses of the public administration of the State.

Twelfth. To impose taxes to cover the same, in accordance with this constitution, and with the general constitution of the federation, and to approve the partition which may be made of them among the districts of the State.

Thirteenth. To establish, change or reform the regulations for the collection of taxes and the administration of the special branches of the State.

Fourteenth. To examine, correct, approve or disapprove the municipal taxes of the towns, and the ordinances for their internal management which their corporations may adopt.

Fifteenth. To make representation to the general congress in regard to the laws, decrees, or general order which are contrary to or prejudicial to the interests of the State.

Sixteenth. To approve or disapprove the regulations which the  
290 government may make for the despatch and administration of the matters under its charge, and of the general regulations which it may make for the health and police of the State.

Seventeenth. To promote, forward, and encourage agriculture, trade, mining, and the arts, removing all the obstacles which impede the progress of said branches, or that of any other industry that may tend to the prosperity of the State.



Eighteenth. To settle the boundaries of the lands of the native inhabitants, settle their differences in accordance with the circumstances and the present system of government.

Nineteenth. To prescribe laws for enlightenment and public education in the State.

Twentieth. To make rules for colonization in conformity with the laws.

Twenty-first. To fix the boundaries of the districts, to enlarge them, abolish them, or create new ones.

Twenty-second. To grant extraordinary powers to the government for a limited time, provided it is required for the general good of the State, or to resist an invasion of a foreign enemy, or to reestablish internal order and tranquillity in conformity with the laws.

Twenty-third. To grant pardons when it may believe it to be necessary by a vote of two-thirds of the deputies present in offences within the jurisdiction of the tribunal of the State.

Twenty-fourth. If, under extraordinary circumstances, the security of the State should require the suspension of any of the formalities prescribed for the arrest and imprisonment of offenders, the legislatures may prescribe them for a fixed time.

Twenty-fifth. To create, suppress, and properly provide for the payment of the offices of the State.

Twenty-sixth. To contract debts, in cases of necessity, on the public of the State, and to designate funds to cover them.

Twenty-seventh. To issue letters of naturalization to foreigners who become residents of the State in conformity with the rules which the general Congress may prescribe.

Twenty-eighth. To grant instruments of rehabilitation for the restoration of the rights of citizenship when they may have been lost or suspended.

Twenty-ninth. To protect the political liberty of the press in conformity with the laws of the general Congress.

Thirtieth. To elect, in accordance with the general constitution, the President and Vice-President of the Mexican federation, the ministers of the supreme court of justice, and senators of the Congress of the union.

Thirty-first. Finally, to exercise all the powers of a legislative body in its internal government and administration, not contrary to the general constitution and the constitutive act.

\* \* \* \* \*

*Section sixteenth.*—Of the public treasury of the State.

292 293. The revenue not reserved by the federation by the decree of classification of revenues of August 4, 1828, last past, are those which up to the present time have formed the elements of the revenue of the State. Hereafter the congress will impose the taxes which it may deem proper, in such amount only as may be sufficient to cover the deficit which may result against the State on account of the general expenses of the Mexican federation which it has to pay and the special expenses of the State itself.

\* \* \* \* \*

Which said exhibit bears the following endorsements: Political constitution, State of Occidente, 1825.

Ex. U. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, dupuyt clerk.

CLARENCE KEY, direct examination—continued:

By Mr. STEVENSON:

Q. Examine paper endorsed, "Classification of general and special revenues," and state what it is.

A. This is a decree in full passed on August 4, 1824, by the general constitutional Congress of the United States of Mexico. It is entitled: "Classification of general and special revenues."

Q. Is that paper a correct translation of the decree of the National Government of Mexico of August 4, 1824?

A. It is correct, so far as I am able to translate it.

293 Q. Was it made by you?

A. Yes, sir.

(Petitioner's Exhibit UU.)

#### EXHIBIT UU.

Which said exhibit is in the words and figures following, to wit:

*Decree of August 4, 1824.*

#### Classification of general and special revenues.

The sovereign general constituent Congress of the United States of Mexico has deemed it proper to decree:

1. That import and export duties already fixed, and those which may be hereafter fixed under any denomination in the ports and on the frontiers of the Republic, pertain to the general revenues of the federation.

2. The import duty of fifteen per cent which shall be collected at the said ports and frontiers upon the tariff valuation, augmented by one-fourth part upon foreign goods, which, on account of this duty, shall be free from local tax (alcabala) in the interior.

3. The duty on tobacco and gunpowder.

4. The local tax (alcabala) on tobacco at the places where it is raised.

5. The revenue from the post-offices.

6. The revenue from the lottery.

7. The revenue from the salt mines.

294 8. The revenue from the territories of the federation.

9. The national property, in which are included that of the inquisition and the temporalities, and all other rural and urban estates which now belong, or which may hereafter belong, to the public treasury.

10. The edifices, offices, and lands attached to these, which now belong, or which formerly belonged, to the general revenues, and those which have been paid for for two or more of those which formerly were provinces, are subject to the disposal of the Federal Government.

11. The revenues which are not included in the foregoing articles belong to the States.

12. The credits, active and passive, of the revenues assigned to the States are of the credit or total of the general revenues.

13. In the peninsula of Yucatan the export duties imposed on the products of the country shall not be included in the general revenues, nor shall any import duty be imposed.

14. The States of the federation shall be assessed in the sum of \$3,136,875, which it is estimated is needed for the general expenses.

15. The assessment shall be for the present, and until there are data which shall furnish the proper proportion, in the following form :

Mexico shall pay .....	975, 000	Durango .....	67, 325
Xalisco .....	365, 625	Estado de Occidente .....	53, 125
Puebla .....	328, 125	Tamaulipas .....	24, 500
295 Oajaca .....	262, 500	Tlaxcala .....	21, 875
Guanajuato .....	218, 750	Tabasco .....	18, 750
Michoacan .....	175, 000	Nuevo Leon .....	18, 750
Yucatan .....	156, 250	Chichuahua .....	16, 875
Zacatecas .....	140, 625	Coahuila .....	15, 625
San Luis Potosi .....	101, 250		
Vera Cruz .....	97, 675	Total .....	3, 136, 875
Querstaro .....	78, 750		

16. The States shall deliver every month or every fifteen days, counting from the one on which they receive their revenues, the part of the contingent corresponding to the period expired, it being at the pleasure of the Government to elect either of the two periods, and even to extend them, should the peculiar circumstances of a State require it.

17. On the first of September next after their revenues and the offices corresponding shall be delivered to the States, striking at the same  
296 time the balances necessary for the definitive settlement of accounts.

18. When the States shall present exact statements of their wealth and population, the present assessment shall be rectified, and payments made to those which may have paid too much, and collection made from those which may have paid too little.

19. The Government shall take the steps most expedient to begin the collection of the import duty as soon as possible, and will arrange matters in such manner that the internal cus'om-houses being delivered, none of the foreign goods which may be in port or on the road be exempted from the payment of the local tax (alcabala), seeing that it is collected with due separation in the said custom-houses.

20. National products shall not pay more than one local tax in the State in which they may be consumed.

21. Consequently, if the local tax has been collected on a national product and it should be afterwards taken to another State the tax paid on it shall be returned.

22. For the first year a third of the contingent to be paid by the States shall be remitted.

Which said exhibit bears the following endorsements : " Aug. 4, 1824.

Classification of general and special revenues. Ex. UU. Filed  
297 Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy.

CLARENCE KEY, direct examination—continued.

By A. M. STEVENSON, Esq. :

Q. Examine paper marked " May 14, 1851, repealing colonization law of Sonora," and state what it is.

A. It was issued by the department of the interior and foreign relations; it is number seventy-two, entitled colonization; and makes void the decree made in regard to colonization by the legislature of the State of Sonora, dated decree of May 6, 1850.

Q. Is that paper a correct translation of that decree?

A. Yes, sir.

Q. And the same was made by you?

A. Yes, sir.

(Petitioner's Exhibit V offered, which is said law of May 14, 1851.)

#### EXHIBIT V.

Which said exhibit is in the words and figures following, to wit:

#### DEPARTMENT OF THE INTERIOR AND FOREIGN RELATIONS, May 14, 1851.

#### No. 72.—Colonization.

The decree made in regard to the same by the legislature of Sonora is declared void.

His excellency the President has been pleased to forward to me the following decree:

298 The constitutional President of the United Mexican States, to the inhabitants of the same:

Know ye, that the general Congress has decreed the following:

The decree of the legislature of the State of Sonora, of May 6, 1850, is unconstitutional. It is as follows:

ARTICLE 1. All the uncultivated and vacant lands in the State on its frontiers which belong to it and which do not belong to any private person or to any corporation or town are open to colonization.

ARTICLE 2. All foreigners who propose to settle on these lands, and against whom there is no prohibition under the general laws, are offered security and protection for their persons and interests.

ARTICLE 3. The State grants to each family settling on said lands one caballeria in area of irrigable, cultivable lands, which is in extent one thousand four hundred varas in length and five hundred and fifty-two in width, or a tract of five thousand square varas in area of abrevadero, and in addition the land necessary for the erection of dwelling houses in the towns.

ARTICLE 4. The settlers on the land, the subjects of this law, shall settle upon them and cultivate them in order to enjoy their fruits, and they shall not alienate them until after the expiration of six years, under penalty of losing them and their being given to another settler who may ask for them.

299 ARTICLE 5. For the term of ten years from the establishment of a colony the settlers are exempt from all tax, direct or indirect, of those now imposed or those which may hereafter be imposed by the State.

ARTICLE 6. The effects, utensils, lumber, and whatever may be imported for the use and consumption of said colony are free also for the said term of all duty.

ARTICLE 7. The products of the colony are also free of all duty in the State.

ARTICLE 8. The gold and silver exported from it are free from the date of its establishment of the assay duty of three per cent.

ARTICLE 9. The Government is empowered in its discretion to decide upon the regimen and interior administration in the founding of colonies which may be established on the said lands, to contract enterprises (empresas) directed to this end, and to determine which lands are most suitable under the bases and franchises of this law; and for these objects further privileges are solicited. They may be granted at the discretion of the Government, subject to the approval of Congress.

ARTICLE 10. Foreigners established in the colony shall enjoy all the rights, civil and political, which the law allows, as well as the right which they held under the same for the acquisition of all kinds of real property.

ARTICLE 11. Mexicans and foreigners shall enjoy the same privileges in a colony in Sonora, but the circumstances being equal, the Mexican empresario shall be preferred to the foreigner.

300 ARTICLE 12. The colony shall be understood to be established as soon as there are at least one hundred families settled in a town.

ARTICLE 13. To the empresario who may contract for the establishment of a colony under the articles of this law, there may be granted in fee ten sitios (tracts) in an area of abrevadera and their caballerias in area of irrigable lands, or ten of land dependant on the seasons (temporal).

ARTICLE 14. The colonists, in case of need, are under obligation to aid in person and with their means in the defense of the State and their new country.

Because it is contrary to article 11 of the act of reforms, which says:

"It is the exclusive faculty of the general Congress to fix bases for colonization, and to prescribe laws in conformity with which the powers of the Union shall exercise their constitutional faculties;" and article 2 of the general law, published on April 25, 1835, which says: "Article 2. In the exercise of the power which the General Government reserved to itself in article 7 of the said law of August 18, 1824, the seaboard and frontier States are prohibited from alienating their vacant lands for colonization until the rules which must be observed to effect the same shall have been published.

MARCELINO CASTAÑEDA,

*President of the Senate.*

PEDRO ESCUDERO Y ECHANOVE,

*Deputy President.*

MANUEL ROBREDO,

*Senator Secretary.*

LEON GUZMAN,

*Deputy.*

301 Wherefore, I order to be printed, published, circulated, and that it be duly observed.

Palace of the Federal Government in Mexico.

May 14, 1851.

MARIANO ARISTA.

To Don JOSE MARIA ORTIZ MONASTERIO.

And I communicate it to you for its fulfillment.

God and Liberty.

Mexico, May 14, 1851.

JOSE MARIA ORTIZ MONASTERIO.

Which said exhibit bears the following indorsements: May 14, 1851. Repealing colonization law of Sonora. Ex. V. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy.

CLARENCE KEY—continued on.

Cross-examination by MATT. G. REYNOLDS, U. S. attorney:

Q. Where did you find the original laws—the constitution of the State of Occidente?

A. I found it in a small book which was handed me by Mr. Stevenson with the request that I translate it.

Q. This document which I hand is is the one from which you made this translation of the constitution of the State of Occidente?

A. Yes, sir.

Q. You know nothing about this except that?

A. No, sir; nothing whatever.

Q. This decree of May 14, 1851, being number seventy-two, repealing law of Sonora on colonization, is a federal law, or a federal decree?

A. Yes, sir; and I made this translation from the law found in the official copy of the Mexican statutes at large, in the office of Mr. T. B. Catron, of this city, dated May 14, 1851. It is made by the general congress and the extracts of it show that fact, as the introduction of it is as follows: "His excellency the President has been pleased to forward to me the following decree. The constitutional President of the United Mexican States, to the inhabitants of the same. Know ye, That the general Congress has decreed the following, &c."

Witness excused.

Mr. STEVENSON. Now offer constitution of the Republic of Mexico of 1824, and the colonization law of the Republic of Mexico of August 18, 1824.

303 Which said colonization law was introduced without being identified as an exhibit, but the same is herein marked Petitioner's Exhibit V1, which said exhibit is in the words and figures following, to wit:

*Decree of August 18, 1824.*

The sovereign general constituent Congress of the United Mexican States has been pleased to decree:

1. The Mexican nation promises to those foreigners who may come to establish themselves in its territory, security in their persons and property, provided they subject themselves to the laws of the country.

2. The objects of this law are those national lands which are neither private property nor belonging to any corporation or town (pueblo), and can therefore be colonized.



3. To this end the congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarkation, with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

4. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, can not colonize without the previous approval of the supreme general executive power.

5. If for the defense or security of the nation the Federal Government should find it expedient to make use of any portion of these lands  
304 for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the general Congress, or during its recess with that of the Government council.

6. Before the expiration of four years after the publication of this law no tax or duty (*derecho*) shall be imposed on the entry of the persons of foreigners who come to establish themselves for the first time in the nation.

7. Previous to the year 1840 the general congress can not prohibit the entry of foreigners to colonize, except compelled to do so with respect to the individuals of some nation, by powerful reasons.

8. The Government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation with respect to the foreigners who may come to colonize. In the distribution of lands Mexican citizens are to be attended to in preference, and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country, or inequality of circumstances, residence in the place to which the lands distributed belong.

9. Military persons who are entitled to lands by promise made on the twenty-seventh of March, 1821, shall be attended to in the States on producing the diplomas granted to them to that effect by the supreme executive power.

305 10. If by decess of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

11. No one person shall be allowed to obtain the ownership of more than one square league of five thousand varas of irrigable land (*de regadio*); four superficial ones of land dependent on the seasons (*de temporal*), and six superficial ones for the purpose of rearing cattle (*de abrevadero*).

12. The new colonists can not transfer their possessions in mortmain (*manos muertas*).

13. This law guarantees the contracts which the grantees (*empresarios*) may make with the families which they may bring out at their expense, provided they are not contrary to the laws.

14. No one who by virtue of this law shall acquire the ownership of lands shall retain them if he shall reside out of the territory of the Republic.

15. The Government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic.

Mr. STEVENSON. Offer the national decree of that Republic of April 6th, 1830.

306 Which said decree was introduced without being identified as an exhibit, but the same is herein marked Petitioner's Exhibit V 2, and is in the words and figures following, to wit :

APRIL 6TH, 1830.

*Decree.*

The Vice-President of the Mexican United States to the inhabitants of the Republic :

Know ye, that the general Congress has decreed as follows :

ART. 1. The entry of those descriptions of cotton goods prohibited by the law of the 22nd of May last shall be permitted in all ports of the Republic generally until the 1st of January, 1831, and in those ports situated on the South Sea, until the last of June, 1831.

ART. 2. The duties arising from the importation of such goods shall be appropriated to maintaining to indivisibility of the Mexican territory, to the formation of a fund of reserve, to be used in case of a Spanish invasion, and to the encouragement of national industry.

ART. 3. The Government shall appoint one or more commissioners, whose duty it shall be to visit the colonies of the frontier States ; to contract with the legislatures of said States for the purchase by the nation of lands suitable for the establishment of new colonies of Mexicans and foreigners ; to enter into such arrangements as they may deem proper ; to watch over the exact compliance of the contracts on the entrance of new colonies ; and to investigate how far the contracts already made have been complied with.

307 ART. 4. The executive is empowered to take possession of such lands as made be suitable for fortifications and arsenals, and for the new colonies, indemnifying the State in which such lands are situated by a deduction from the debt due by such State to the federation.

ART. 5. The Government may cause such number of the convicts destined for Vera Cruz and other places as it may deem proper to be conducted to the colonies it may establish, paying at the same time the expense of removal of such families as may desire to accompany them.

ART. 6. The said convicts shall be employed in the construction of the fortifications, public buildings, and roads which the respective commissioner may judge necessary, and every convict who shall receive a grant of land and shall be furnished with implements of husbandry and a subsistence during one year.

ART. 7. Mexican families who may voluntarily desire to become colonists shall be conveyed free of expense, subsisted during one year, and receive a grant of land and the necessary implements of husbandry.

ART. 8. The individuals spoken of in the anterior articles shall conform to the laws of colonization of the federation and the State in which they are settled.

308 ART. 9. The entrance of foreigners by the frontier of the north, under any pretense whatsoever, is prohibited, unless furnished with a passport, signed by an agent of the Republic in the country from which the individual may come.

ART. 10. No change will be made with respect to the colonies already established, nor with respect to the slaves which they now contain ; but

the General Government, and that of each particular State, shall exact, under the strictest responsibilities, the observance of the colonization laws, and the prevention of the further introduction of slaves.

ART. 11. In exercise of the right reserved to the General Congress by the 7th article of the law of 18th of August, 1824, the citizens of foreign countries lying adjacent to the Mexican territory are prohibited from settling as colonists in the States or territories of the Republic adjoining such countries. Those contracts of colonization, the terms of which are opposed to the present article, and which are not yet complied with, shall consequently be suspended.

ART. 12. For and during the term of four years the coasting trade shall be free to foreign vessels for transportation of produce of the colonies to the ports of Matamoras, Tam'ico, and Vera Cruz.

ART. 13. For and during the term of two years the introduction of frame houses and of every kind of foreign provisions shall be admitted into the ports of Galveston and Matagorda free of duty.

ART. 14. The Government is authorized to expend in the construction of fortifications and public buildings on the frontier, in the transportation of convicts and Mexican families to the new colonies, in the subsistence of such during one year, in implements of husbandry, transportation of troops, and premiums to agriculturists who may distinguish themselves amongst the colonists, and for the general purposes contemplated by the foregoing articles, the sum of five hundred thousand dollars.

ART. 15. For the purpose of raising promptly one-half of the said sum the Government is authorized to negotiate a loan, payable from the duties received on coarse cotton goods, at the rate of three per cent per month, to be paid at the term fixed by the Arancel.

ART. 16. The twentieth part of the above-mentioned duties shall be employed to encourage cotton manufactories, by purchasing machines and looms, by furnishing small sums to aid in their establishment, and by such other means as the Government may deem most advisable, apportioning the aid among the States where this branch of industry exists. This appropriation shall be placed at the disposition of the minister of relations, to be applied to the above-stated interesting objects.

ART. 17. Out of the produce of said duties shall also be reserved three hundred thousand dollars for the formation of a fund to be deposited in the treasury, under the most strict responsibility of the Government that it shall not be touched except in case of Spanish invasion.

ART. 18. The Government shall form a system for the regulation of the new colonies, and shall, within one year, lay before Congress an account of the colonies established under this law and a statement of the increase of the new settlement on the frontiers.

JOSE DOMINGUEZ,

*Pres't of the Ch. of Dep.*

MIGUEL DUQUE DE ESTRADA,

*Pres't of the Senate.*

JUAN VICENTE CAMPOS,

*Dep. Sect.*

RAFAEL DELGADO,

*Sect. of the Senate.*

Wherefore, I command the present to be printed, published, and circulated and fulfilled.

Palace of the Federal Government, Mexico, April 6th, 1830.

ANASTACIO BUSTAMENTE.

To D. LUCAS ADAMAN.

Mr. STEVENSON. I offer decree of the national Congress of Mexico of October 16, 1856.

Which said decree was introduced without being identified as an exhibit, but the same is herein marked Petitioner's Exhibit V 3, and is in the words and figures following, to wit :

Department of state and office of government.

His excellency the substitute President has been pleased to direct to me the decree which follows :

Ignacio Comonfort, substitute President of the Mexican Republic, to the inhabitants thereof :

Know ye that the constituent Congress, in use of the faculties which it has to review the acts of the executive, decrees what follows :

311 1. The decree of November 25, 1853, and of July 7, 1854, are null.

2. D. Antonio Lopez de Santa Anna and the ministers who have intervened in their approbation and publication are responsible with their property for the damage and losses which they have occasioned.

3. The governors of the departments are equally responsible with their property for the damages and losses which they have caused in executing the provisions relative to public lands by going out of the limits marked in the respective rights.

J. MARIA MATA,

*President.*

LEON GUZMAN,

*Deputy Secretary.*

JOSE MARIA CORTES Y ESPARZA,

*Deputy Secretary.*

Wherefore I command it to be printed, published, circulated, and that due compliance be given it.

Palace of the National Government in Mexico, the sixteenth of October, 1856.

IGNACIO COMONFORT.

To the citizen JOSE MARIA LAFRAGUA,

*Minister of Government.*

And I communicate it to you for your understanding.

God and liberty.

Mexico, October 16, 1856.

LAFRAGUA.

Which said exhibit bears the following endorsements, to wit: Decree of Oct. 16, 1856. Annulling decrees of Santa Anna. Ex. V 3. Filed Oct. 18, 1892. J. H. Reeder, clerk, by I. L. Chaves, deputy.

312 E. M. SANFORD, being first duly sworn, testified, in English, on behalf of petitioner, as follows :

Direct examination by A. M. STEVENSON, Esq. :

Q. Where do you reside?

A. I am a resident of Yuma, Arizona.

Q. Did you prepare the petition for the confirmation of the grant of land involved in this case?

A. I did.

Q. Are you acquainted with the location and character of the land in this case?

A. I have been over it and have a general knowledge; yes, sir.

Q. State whether or not the description of the land claimed is correctly described in the petition.

A. I believe it is.

Q. Then the description in the petition correctly describes the land in the grant made by the State of Sonora to Fernando Rodríguez?

A. Yes, sir; barring the land from the confluence of the Gila and Colorado rivers to the Paso de los Algodones; there there is some land still below the line.

Q. That is, part of the land is not included in the petition, but is still in the limits of Mexico and the El Paso de los Algodones grant?

313 A. There is, yes, sir; a part.

Q. Are you acquainted with the place called El Paso de los Algodones?

A. Yes, sir; that is in the State of Sonora, south of the international boundary line of the United States; and it is below what they call Carter River, and Carter River is one of the tributaries of the Salt River.

Cross-examination by MATT. G. REYNOLDS, U. S. attorney:

Q. How much of this land is south of the line?

A. I should judge—I can't give the acreage, but probably as much as mile and a half or two miles down.

Redirect examination by A. M. STEVENSON, Esq.:

Q. State, if you please, if you made the negotiations for the purchase of this land from the Colorado Commercial and Land Company.

A. I did; I negotiated the purchase and made the purchase myself.

Q. State if anyone was in possession of the land at the the time you purchased it from the land company.

A. Sup'intendant Purdy, one of the original officers of the company, was.

Q. Where did Mr. Purdy live?

A. He lived down there; formerly lived on the Old Colorado Railroad. The place was called Arizona City and then Colorado City, and it was changed by this company to Yuma.

314 A. But this settlement was made by this company a little below that—.

Q. But made on the grant?

A. Yes, sir.

Witness excused.

EARL B. COE, the petitioner, being first duly sworn, testified in English as follows :

Direct examination by A. M. STEVENSON, Esq.:

Q. What is your name and residence?

A. Earl B. Coe; residence, Denver Colorado.

Q. Are you the plaintiff in this case?

A. I am.

Q. I will ask you to examine these several photographs, claiming to be photographs of signatures, and state if you know when these photographs were taken and under circumstances.

A. I do.

Q. I will ask you if these photographs were taken at the office of the treasurer-general of the State of Sonora at the time that Justices Murray and Sluss visited there for the purpose of taking testimony in this case?

A. They were taken at that time and under those circumstances by Mr.

A. W. Dennis.

Q. State in a general way what they are.

A. I can identify them by letter, and will say that these photographs were all taken from documents other than the documents in question in this case, and from documents that at the time were admitted, so far as this case was concerned, to be genuine documents on file in the archives of Sonora. They are prepared and marked alphabetically from "A" to "Z," and then again from "A1" to "F1."

Q. Are you acquainted with the character and location of the land the plaintiff seeks to have confirmed in this action?

A. I am.

Q. Will you state the improvements that have been placed there by yourself and your grantors?

A. There is a ditch built about twelve or thirteen miles—completed that length, but surveyed the entire length of the grant; the grant of land has been surveyed, also laterals, that is, subdivisions; machinery for lifting water into the ditch, pumps, engines, and boilers have been completed, pumping apparatus requisite for supplying the water for the irrigation of the grant provided; a portion of the grant, I think about twelve miles, is under fence; some portions of it clear; some portions of it cultivated.

Q. Have you been connected with this enterprise since the Colorado Commercial and Land Company conveyed it?

A. Yes, sir.

Q. State if you please about how much money you and your associates have spent upon this enterprise.

A. About one hundred and forty or one hundred and fifty thousand dollars. I would like to state possibly I was a little high, when speaking of this land, as part of the improvements is on the Government land, adjoining and running through some Government land.

Q. What is the general character of the land known as Government lands with reference to the character of the land in this grant?

A. It is precisely the same until we move back; then, perhaps, it is little better, this Government land, on account of the overflow of the Colorado on the grant, but the general characteristics of the land are the same.



No cross-examination.

Mr. STEVENSON. We now formerly offer these photographs as testified to by Mr. Coe, and ask to have them identified as numbered by him.

Which said exhibits are enumerated as follows: Being thirty (30) photographs, cabinet size, identified alphabetically "A" to "Z," inclusive, and from "A1" to "D1" inclusive; also "G1"; also two very large-size photographs, identified as "E1" and "F1." It being impossible to attached said exhibits hereto, the same are put under separate cover, forwarded herewith and made a part of this transcript.

Mr. STEVENSON. We offer certain correspondence between John Wasson, surveyor-general of the Territory of Arizona, and the Commissioner of the General Land Office, which correspondence is certified to by Royal A. Johnson, surveyor-general of the Territory of Arizona, said certificate being dated June 2, 1892. (Petitioner's Ex. W.)

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# EXHIBIT W.

Which said exhibit is in the words and figures following, to wit:

(Official letters must be addressed to the "Commissioner of the General-Land Office," and in replying to letters from the office the initial letter on the left-hand corner should be referred to.)

D

L. A. F.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., Feb'y 12, 1874.*

JOHN WASSON, Esq.,

*U. S. Surveyor-General, Tucson, Arizona Ty.:*

SIR: Whenever you shall be satisfied that any part of the lands under your jurisdiction is included within the limits of a private-land claim derived from the Spanish or Mexican authorities you are hereby directed not to permit such lands to be surveyed as public lands of the United States until the rights of the private-land claimants have been determined or the land thus claimed has been decided not to be within the limits of such Spanish or Mexican claim; and if any land thus claimed has already been surveyed you are hereby directed to suspend all sections or parts of sections thus included and which you are satisfied are claimed as aforesaid.

318

Very respectfully, your obedient servant,

WILLIS DRUMMOND,  
*Commissioner.*

(Endorsed:) General Land Office. Washington, D. C., Feb. 12, 1874. Commissioner. Relative to lands within the limits of Spanish and Mexican grants. Red'd March 7, 1874.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF U. S. SURVEYOR-GENERAL,  
*Tucson, Arizona, March 17, 1874.*

Hon. WILLIS DRUMMOND,

*Commissioner Gen'l Land Office, Washington, D. C.:*

SIR: Since the receipt of your letter of the 12th ultimo, regarding lands within the limits of Spanish and Mexican grants, which I duly

acknowledged on the 7 instant, I have given the subject of it careful consideration and have formed some conclusions which it seems prudent to submit to you.

There is no evidence in this office to fully satisfy me that any specific tract of land in Arizona is covered by a Spanish or Mexican grant, and therefore I do not deem it a clear duty to at present exercise the authority conferred by you in such cases.

Mullen and Hyde, of San Francisco, Cal., representing themselves as attorneys for Juan D. Robinson, of that city, have forwarded to me a package of documents which on their face show that Robinson claims an extensive grant of land at the junction of the Gila and Colorado rivers in this Territory, covering a large portion of the land required to be subdivided by Theo. F. White, D. S., under his contracts, Nos. 18 and 21, of dates, July 7, 1873, and August 25, 1873. There is such evidence of a grant presented in these papers that I feel justified in declining to send approved plats and descriptive lists of surveys to the local land office, but will complete the work for this office, the local land office, and the General Land Office, and send the work and deputy's account therefor to your office, for these reasons :

Both contracts were entered into and finally approved before I had the least knowledge that a grant was claimed there, and owing to so much agitation, publication, and notori'ty given to the Yuma town-site case without an intimation of there being a grant there, I was satisfied there was none.

The first time my attention was properly called to an examination of title to this class of lands was on the 7 instant, on receipt of your letter.

I have serious doubts of my power to suspend work under contracts named, even if I could understand how any public benefit could be attained thereby, and about one-half the work of contract No. 18 (for \$5,000) relates to lines outside of the alleged grant, and all the work under it has been executed by the deputy, as also a greater portion of that under contract No. 21 (for \$2,500), two-thirds of the field notes being already in this office in the hands of the clerks.

To restate my purpose, I have decided to act as follows :

Complete the work of this office on the survey made by Theo. F. White, D. S., under contracts Nos. 18 and 21, withhold the plats and descriptive lists from the local land office until it shall satisfactorily appear that said surveys are not covered by a grant, and transmit the transcribed and approved field notes and plats, together with the deputies' accounts for the field work, to your office. Should you disapprove this course, please favor me with a telegram to that effect and follow it with instructions.

Very respectfully, your obt. servt.,

JOHN WASSON,  
*Surveyor-General.*

(Official letters must be addressed to the "Commissioner of the General Land Office," and in replying to letters from the office the initial letter on the left-hand corner should be referred to.)

E.  
S. J. D.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., April 18th, 1874.

JOHN WASSON,  
*Surveyor-General, Tucson, Arizona :*

SIR : I am in receipt of your letter of the 17th ultimo, referring  
321 to mine of the 12th of February last, relative to lands within the  
limits of Spanish and Mexican grants.

You state that documents have been filed in your office by the attorneys  
of Juan D. Robinson, which show that Robinson claims an extensive grant  
at the junction of the Gila and Colorado rivers covering a large portion  
of the land required to be subdivided by Deputy Theo. F. White under  
his contracts, Nos. 18 and 21.

You further state that all the work under contract No. 18 and the  
greater portion under contract No. 21 has been executed in the field and  
the notes returned to your office. You propose, therefore, under these  
circumstances, to forward the returns under said contracts to this office, as  
usual, but to withhold the plats and descriptive lists from the local land  
office until it shall be satisfactorily determined whether the surveys are  
covered by a private grant.

In reply, I have to say that your course is approved in this case, but  
you will in future suspend surveying operations whenever it shall appear,  
from the documentary evidence, that the lands under contract fall within  
the claimed limits of a Spanish or Mexican grant.

Very respectfully,

WILLIS DRUMMOND,  
*Commissioner.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF U. S. SURVEYOR-GENERAL,  
Tucson, Arizona, April 25, 1874.

322 HON. WILLIS DRUMMOND,  
*Commissioner Gen'l Land Office, Washington, D. C. :*

SIR : I have this day forwarded by mail to your address the transcribed  
and authenticated field notes and approved plats of the surveys executed  
by Theodore F. White, D. S., under his contract of July 7, 1873, and  
herewith find account for same amounting to \$4,901.52. The surveys  
under this contract are as follows, viz : That portion of the first standard  
S. which makes the S. boundary of Tps. 5 S., Rgs. 8, 9, 10, 11, 12, 13, 14,  
15, 16, 17, 18, 19, 20, 21, and part of 22 W. The line between Tps. 6  
and 7 S., Rgs. 21 and 22 W., and exterior lines of Tps. 8 S., Rgs. 22, 23,  
and 24 W., 9 S., Rgs. 22, 23, 24, and 25 W., and 10 S., Rgs. 22, 23, 24,  
and 25 W., including a portion of second standard S. The subdivision  
lines of Tps. 8 S., Rgs. 23 and 24 W., 9 S., Rgs. 24 and 25 W., and 10  
S., Rgs. 24 and 25 W., together with meander lines therein, all of which  
refer to the Gila and Salt River meridian, Arizona.

The account for the above surveys is payable out of the appropriation  
for public surveys in Arizona for the fiscal year ending June 30, 1874.

Mr. White requests that in payment draft on Asst. Treasurer, San Fran-  
cisco, be sent to his address, care Commercial Bank, San Diego, Cal.

Plats of townships subdivided under the foregoing surveys  
323 have not been filed in proper district land office for the reason  
that is fully stated in my letter to Gen'l Land Office, of date  
March 17 ult. There is such evidence in this office that certain portions  
of the lands surveyed are claimed under a Mexican grant as to justify me  
in suspending these lands, in accordance with instructions from Gen'l  
Land Office, D., left corner, dated Febr'y 12, 1874.

Very respectfully, your obt. servt.,

JOHN WASSON,  
*Surveyor-General.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF U. S. SURVEYOR-GENERAL,  
*Tucson, Arizona, January 9, 1875.*

LEVI RUGGLES, Esq.,  
*Register U. S. Land Office, Florence, A. T.:*

SIR: I have this day forwarded by mail for the files of your office  
plats and descriptive lists of the subdivision of township surveyed by  
Theo. F. White, D. S., under his contract of July 7, 1873, and August 25,  
1873, as follows:

Township 8 S., ranges 22 and 23 W.	} Of the Gila and Salt River meridian.
" 9 S., " 22, 23, and 24 W.	
" 10 S., " 23 and 24 W.	

In the usual course these plats and descriptive lists would  
324 have been filed in your office previously to May 19, 1874, but  
have not been so filed because of covering land coming under the  
disignation "included within the limits of private land claims derived  
from the Spanish or Mexican authorities." In regard to surveyed lands  
so included, I was directed by the Com'r of the Gen'l Land Office by  
instructions of Febr'y 12, 1874, as follows: \* \* \* "If any land  
thus claimed has already been surveyed you are hereby directed to suspend  
all sections or parts of sections thus included."

Having lately become satisfied that the land in the aforesaid townships  
either wholly or in part was relieved of the suspicion of being included  
within limits of a Spanish or Mexican claim, I now file said plats and  
descriptive lists in your office with the remarks:

The lands in townships 8 S., R. 22 W., and 10 S., R. 23 W., are wholly  
exempt from claim under Spanish or Mexican title, within the present  
knowledge of this office, and are wholly open to entry.

In the following townships the land in certain sections and parts of sec-  
tions are believed to be claimed under Spanish or Mexican title, and in  
accordance with instructions I hereby suspend from entry the following-  
named sections of townships:

In township 8 S., R. 23 W.: Lots 4 and 5 of the N. W.  $\frac{1}{4}$  of sec. 22;  
the W.  $\frac{1}{2}$  of sec. 28; the whole of secs. 19, 20, 21, 29, 30, 31, and  
325 32. In township 9 S., R. 23 W.: The N. W.  $\frac{1}{4}$  of sec. 5; the N.  
 $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of sec. 7, and the whole of sec. 6.

In township 9 S., R. 24 W.: The N. W.  $\frac{1}{4}$  of sec. 24; the N.  $\frac{1}{2}$  and S.  
W.  $\frac{1}{4}$  of sec. 26; the whole of secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,  
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34.

In township 10 S., R. 24 W.: The N. W.  $\frac{1}{4}$  of sec. 3; the N.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of sec. 9; the W.  $\frac{1}{2}$  of sec. 20; the N.  $\frac{1}{2}$  and S. W.  $\frac{1}{4}$  of sec. 30; the N. W.  $\frac{1}{4}$  of sec. 31; and the whole of secs. 4, 5, 6, 7, 8, 17, 18, and 19.

And the sections and parts of sections not named in these several townships are wholly open to entry.

Very respectfully,

JOHN WASSON, *Surveyor-General.*

To which said exhibit the following certificate is attached, to wit:

OFFICE OF SURVEYOR-GENERAL,  
*Tucson, Arizona, June 2nd, 1892.*

I hereby certify that the ten papers attached hereto are a correct copy of the papers it purports to be a transcript of, on file in this office.

[SEAL.]

ROYAL A. JOHNSON,  
*U. S. Surveyor-General, District of Arizona.*

326 Which said exhibit bears the following endorsements: Ex. W.

Certified copy of letters of U. S. Surveyor-General John Wasson and Hon. Willis Drummond, Commissioner G. L. O., relating to suspension of lands covered by Paso de los Algodones private land grant claim. Certified June 2, 1892, by Royal A. Johnson, U. S. sur. gen'l. Filed June 6, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed October 18, '92. James H. Reeder, clerk, I. L. Chaves, d'p'ty.

At this point court adjourned until 10 o'clock Thursday morning, December 15, 1892.

And be it further remembered, that afterwards, to wit, on the fifteenth (15) day of December, the same being the fourteenth (14) day of the regular December term, 1892, of this court, the following further proceedings were had, to wit:

ALGODONES LAND CO., PLAINTIFF,	} D. 1. Santa Fe No. 47.
<i>vs.</i>	
THE UNITED STATES.	

327 On this day the above-entitled cause came on to be further heard, and there appeared Earl B. Coe, esq.; A. M. Stevenson, esq.; S. L. Carpenter, esq., and E. M. Sanford, esq., attorneys for plaintiffs in this cause, and Matt. G. Reynolds, attorney for the United States. Further oral and documentary proof was introduced by plaintiff in this cause, after which the same was argued for and on behalf of the United States by the United States attorney, Matt. G. Reynolds, esq.; the arguments not being concluded, the further hearing of the cause was continued until to-morrow.

Upon the continuance of the trial of this cause, on said above-named day, to wit, the 15th of December, 1892, the following testimony, oral and documentary, was introduced, to wit:

E. M. SANFORD, being recalled on behalf of petitioner, testified as follows:

Direct examination by A. M. STEVENSON, Esq.:

Q. How much time have you spent in the State of Sonora examining the archives and records of that State relating to grants of land made by the State?

1746—10.

- A. Something like four months in all.
- Q. Have you visited Sonora at any time other than this time?
- A. I have been there on four different occasions.
- Q. Did you in such examinations of the archives examine the hand-writings and hand rubrics of Jose Tamayo?
- A. Yes, sir; I have.
- Q. For what years did you find his writing in the different papers of the archives of the State of Sonora?
- A. In portions of '37, '38, and '39.
- Q. What positions did he hold in the State?
- A. As I would translate it, he was porter and scribner to Jose Justo Milla.
- Q. Do you mean Milla, the contador, and was he employed in the treasurer-general's office in a clerical capacity?
- A. Yes, sir; a clerk for the contador of the treasury.
- Q. Who was contador of the State of Sonora in 1838?
- A. Jose Justo Milla.
- Q. How do you know that Jose Tamayo held the positions that you say he held during the year 1838?
- A. I found in the archives a document which is as broad as a newspaper, which gave the necessary expenses, estimates of expenses for the closing year, and those expenses of the executive and judicial departments for the fiscal year commencing July first, 1838. It first states the names of the various officers—gives their salary and amount of expenses—Jose Justo Milla, then gives the first and second offices, and then gives the third offices—Bartolo Miranda, and then Julian Padilla, their scribners, Ancilia Auxicino; Jose Tamayo, he was put down in the list as "portria escribmento contodro de moninedas".
- Q. Did you examine any papers of the year 1838 which purported to be, or which were, signed or written by Jose Tamayo?
- A. I did not make a particular comparison of this handwriting
- 329 in the list with Tamayo's, but on last Thursday I found a record there on separate sheets of paper with the seals of '37, '38, and '39, which were the records of stock brands for that year, and they seemed to have formed, in making them, a specified form, and on the side is the shape of the stock brand. Those, a majority of them—yes, I may say seventy-five per cent—are in the handwriting of Jose Tamayo, and they were in the form—Jose Tamayo certifies so and so, and Bartolo Miranda certifies so and so.
- Q. Explain, if *the* you please, to the court what kind of a record book it was that these different sheets of writing of Jose Tamayo composed?
- A. It is on the regular sealed paper, issued and stamped, same as was used at that time; it was composed of separate sheets of papers.
- Q. Did you take any of these sheets of paper, upon which were found Jose Tamayo's handwriting, and compare them with his writing as found on the different sheets of paper in the original matrix or expediente in this case?
- A. Yes, sir; a good many of them, fifteen or twenty very carefully.
- Q. I will ask you to examine the handwriting found in the exhibit of the Government, marked photograph number three of phot'graph exhibits, filed before the surveyor-general of Arizona, and being, or purporting



to be, a phot'graph of one of the pages of the original expediente of title issued to Fernando Rodriguez of the land in controversy, in 1838,  
330 and state whether or not the writing found *found* on this photographic copy is, in your opinion, based upon an examination and comparison made by you, the handwriting of Jose Tamayo, or state in whose handwriting it is.

A. That is in the handwriting of Jose Tamayo.

Q. Explain, if you please, what comparison you made of this handwriting in arriving at that conclusion.

A. I placed these sheets one at a time beside the writings in the title in this case, first on the place referred to as Photographic Exhibit three, and then at the several offers of sale, and the last one to Rodriguez, as found in the original matrix, and I concluded they were certainly in the handwriting of Jose Tamayo. I mean these sheets on which the stock brands were made; each sheet formed a separate record of a stock brand; after finishing one they would commence another sheet and make a stock brand for somebody else; I took each one of these sheets, put it down beside this matrix, and examined it in that way.

Q. Examine, if you please, the writing upon the last part of page number thirteen of the book referred to in my last question, the same being photographic copy of the portion of the original expediente in this case and signed with the word Milla, and state in whose handwriting the latter portion of that page or photographic copy is?

A. This handwriting in Government exhibit, photograph No. thirteen, the latter part of the photograph, is in the handwriting of Jose Tamayo, to the best of my judgement; I am certain of it.

331 Q. Did you make the same comparisons with that portion of the instrument, expediente original, that you did with other portions of the instrument about which you have testified?

A. I have not made the examination with the original matrix, for the reason that it is doubtful—

(Did not catch the rest of the reply of witness.—Steno.)

Q. Were there any other portions of the original expediente or matrix in the handwriting of Jose Tamayo?

A. The page of the third auction sales is in the handwriting of Jose Tamayo. I am not so certain about that handwriting there [indicating]; the "p's" are the same and the writing has the same general formation, but I didn't make so much of a comparison with this.

Q. Did you make careful comparison of the first part?

A. Yes, sir. I spent a whole day on it.

Q. Was there any difficulty in determining that the writings were the same when placed side by side?

A. No, sir; it was difficult to say where the commencing of one was and the ending of the other; except the phrase the names were the same.

Q. Did you find any handwriting of Jose Tamayo in the book of the year 1853?

A. These papers are kept in boxes that are shaped like a book; they are probably four inches thick, and probably twelve by fourteen,  
332 and have a trap door that they open, and all these lists, papers, borradores, and official documents received during these years are kept loose in these boxes; some times they have been taken up and fixed together in the shape of a book.

Q. Did you make any particular comparison or examination of the contents of these boxes for 1838? Have you never made any comparison of these?

A. Only to find out the handwriting of the documents and whose it was. I went over every matrix and every paper that was loose there and examined it.

Q. From the comparison and examination of these different papers which you saw, often loose records, can you describe the manner matrixes are made up?

A. The matrix is a book made up of these loose sheets, which represent the steps taken, which are sewed up together and form a sort of a book, maybe one-quarter to one-half an inch thick.

Q. You say into this box are placed loosely many leaves, official documents, borradores, &c., and they form, when put together, what we call the original copy or matrix?

A. Yes, sir; also other papers are in them referring to it. Correspondence between various officials are placed in here loosely, and also other documents and a great many papers that do not belong to the same, and some of the papers may be in other documents.

Cross-examination by MATT. G. REYNOLDS, U. S. attorney.

333 Q. Did you say the matrix was entirely in the handwriting of Jose Tamayo?

A. No, sir.

Q. How many different handwritings are there in that matrix?

A. Several. Mr. Rodriguez' is one handwriting; Mocio—Par—appointing the surveyor, is on the handwriting of some one else. I think that is Carrillo's handwriting; it is a peculiar and is very dissimilar to any I could find.

Q. Did you ever determine who wrote the balance of it besides Tamayo?

A. Much of it there is the handwriting as shown in Government photograph exhibit number one, and there is portions of documents there in writing like Government exhibit number two, though I am not certain as to who it is; there is handwriting of Jose Tamayo, as that appearing on Government exhibit number three, seven, and eight, and the lower half of exhibit number thirteen; and that is another handwriting as that shown in the top of Government exhibit number thirteen, which I have formed the impression was the handwriting of Jesus Frasquillo; there are various handwritings in the office like it. And there is another handwriting which appears on the certified copy of the corga y data; that handwriting I am inclined to think is Bartolo Miranda's.

Q. Did you, in undertaking to determine who wrote this instrument—did you undertake to compare it with other matrixes on file in the office?

334 A. Yes, sir; many other documents.

Q. Did you find the same handwritings?

A. In many of them.

Q. Why didn't you make a note of the fact of what you could find in other Spanish documents?

A. The day that we started in to make the comparison with these handwritings I was not familiar with them, and I was on that examination

only a couple of days, and was there alone ; I went over them, and when I found anything like it I would take it down and compare it.

Q. When you might find, in comparing, another matrix like the writing in the body of this matrix, you didn't make any note of the portion which you compared ?

A. No, sir.

Q. Did you compare it with the Sargento matrix ?

A. Yes, sir ; I had the Sargento before me and would put the two, the Sargento and Algodones, before me and examine them with the others in that way.

Q. What did you see about the Sargento and this matrix ; does the handwriting in it correspond with those on this ?

A. On the Sargento, for instance, the Toma de Razon on the Sargento is on the top of the page, while in this it is on the bottom of the page.

Q. Is the Toma de Razon on the matrix's written by the same man on both ?

A. Yes ; I believe so.

Q. And is the petition written by the same man in both ?

335 A. I can't say about that ; I made no comparison of the petition.

Q. Did you make a comparison of each sale, and were they written by the same person ?

A. Yes, sir ; by the same man.

Q. Did the different days correspond ? For instance, the twenty-fifth of the month, did that correspond with the twenty-fifth of the month on the Sargento ?

A. I could not be positive. My impression is that the commencement of the proceedings are alike, and the auction sales are alike ; the proceedings before the junta de almoneda are in the same handwriting, I am not positive ; and I know also the Toma de Razon is in the same handwriting.

Q. In order to determine who wrote the body of any instruments or grant matrix's did you compare the matrix in this case ?

A. Yes, sir ; in certain other books ; in the book called " Derecho de Fincas," on the cover—it is a sheepskin cover—is the name of the book. The paraphis of the man who kept the book, it is the maraph of Jesus Frasquillo.

Q. In those examinations did you find that this fellow, Jose Tamayo, did you find any of his handowritings ?

A. I said—

Q. Is not the only reason that you know his handwriting here is the fact that his name appears on it ?

A. No, sir ; his estimate for salaries and expenses for the  
336 fiscal year is in the handwriting of Jose Tamayo, but his name simply appears on there, and that is how I got to know that he was a clerk in the office ; but his handwriting appears particularly in the stock brands for that year, in which he says, Jose Tamayo declares so and so ; his name is in the certificate.

Q. How did you determine him to be a clerk in Milla's office ?

A. By this estimate of expenses for the fiscal year ; the pay role, though, it is not exactly a pay role.

Witness excused.

Mr. STEVENSON. We offer a translation of the testimonio filed in this case, made by R. C. Hopkins and attached to the original petition.

(Which said translation of said testimonio is attached to the petition in this case and marked Exhibit B thereof, and the same is incorporated in this transcript as Exhibit B of said petition, commencing on page 12 hereof.—Clerk.)

Mr. STEVENSON. We offer translations of the exhibits that are written in Spanish which have heretofore been offered in evidence.

And petitioner rests.

Mr. REYNOLDS, U. S. attorney, on behalf of the defendant, the United States. I offer in evidence, if the court please, the deposition of  
337 Mr. R. C. Hopkins, taken at Hermosillo in May, 1892. (Defendant's Exhibit A.)

Which said Exhibit A is in the words and figures following, to wit:

R. C. HOPKINS, being duly sworn on behalf of the United States, testifies as follows, to wit:

Q. State your full name, age, residence, and occupation.

A. Rufus C. Hopkins; 76 years of age; residence, San Francisco, California; at present no special occupation.

Q. State fully and completely what has been your occupation from time to time for the last forty years.

A. From 1852 until 1855 I was clerk of one of the courts at San Francisco; from 1855 to 1885 I was in the Federal service, employed by the Government in connection with Mexican and Spanish land grants located in the State of California and in the Territory of Arizona. In California I had charge of the archives of the former Spanish and Mexican governments. My duties were to take care of the archives, furnish copies and translations thereof when required, to give testimony to the United States relative thereto when called upon by the Government or private have a claim pending before the courts of the country. In this service I was occupied in California from the 3rd day of Nov., 1855, until the early part of the year 1879, when I was sent by the Department of the Interior as a special agent to Mexico to examine the public records of that country in order to ascertain what grants might have been made by the Spanish and Mexican Government, within the Territory of Arizona, having, however, in the year 1872, been employed by the Texas Pacific R. R. Co. to visit Mexico in order to ascertain what grants might be found relative to the lands in southern Arizona. In this service, although I held a commission from the Secretary of the Interior, I was paid  
338 by the Texas Pacific Company and was not employed by the Government.

Q. During the time you were in the employ of the Texas Pacific did you receive and pay from the Government as special agent?

A. I did not.

Q. Your commission was to enable you to obtain access to the archives was it not?

A. It was.

Q. Who obtained it for you?

A. It was obtained by Mr. B. Bristow and Mr. Thos. Scott of the Pacific R. R. Co. I was specially notified in the commission that I was to look to them for my pay.

Q. You are famil'ar with the Spanish language, could write it, translate it into English, and English into Spanish, could you not ?

A. I could.

Q. State whether or not you have an extensive knowledge of the Spanish language and the terms used in Spanish and Mexican documents relating to grants of public lands.

A. I have such knowledge as would naturally be acquired in the service in which I have been engaged since the year 1855.

Q. During this time did you have occasion to examine many Spanish and Mexican grants, and the records thereof, as to the regularity in making the proceedings to the same ; also comparing Spanish and Mexican documents and records to determine the question as to the genuiness  
339 of the instruments themselves and the signatures of various officials attached thereto ?

A. There were a number of grants in California which, upon carefully examination, were shown to be simulated or forged which had been confirmed by the board of land commissioners during the commencements of the proceedings of that board. These claims were brought before the U. S. district court. They were examined with extreme care ; in fact all of the grants were. Most of my time during the first years of my service for the Government in this matter was taken up in such examinations and in giving testimony for the U. S. courts.

Q. State whether or not and when and under what circumstances you ever made an examination of the archives of the State of Sonora in relation to the grant commonly called El Paso de los Algodones, claimed to have been made to one Fernando Rodriguez in April, 1838L

A. My first examination of the archives in the State of Sonora was made during the spring of 1873, when I was in the service of the Texas Pacific R. R. Co. At that time my examination were made *coursely*, my object being to ascertain what grants were on file for grants in the southern portions of Arizona.

At this time I found among the other grants grant of El Paso de los Algodones. I made my *my* report to the president of the Texas Pacific R.

R. Co., but made no report to the Government. In 1879 I was sent  
340 by the Department of the Interior to examine the archives in Sonora and other portions of Mexico relative to grants of lands in Arizona, and was instructed to make careful examinations relative to such grants for the locations, character, and all things showing whether they were genuine or not. On this examination I again examined the record of the Algodones grant with others I found for lands in Arizona ; made a report to the Governmen' relative thereto about the month of August 1879, I think. In this report I expressed my opinion as to the character of the grants I examined, which report is on file in the General Land Office at Washington, and also in the office of the U. S. surveyor-general of Arizona. I subsequently made several examinations of the archives of Sonora under special instructions from the U. S. surveyor-general of Arizona, during one of which examinations I procured a number of photographs from the

archives to be used as exhibits in the report to be made to the U. S. surveyor-general of Arizona, to Com. Gen. Land Office relative to the grant Algodones.

Q. During these various examinations, and particularly the last two, I'll get you to state whether or not you examined and compared the writing contained in the body of the matrix of the Algodones claim, also the signature of the granting officer, Jose Justo Milla, with other records and archives in the office, with a view of determining whether the same was genuine or not.

A. I did.

Q. Did you do the same thing with the testimonio that was  
341 filed with the surveyor-general?

A. I did.

Q. Did you also make at that time a comparison with the original matrix of the grant commonly called La Punta del Sargento to Fernando Rodriguez, made April 12th, 1838, being same date as the Algodones grant?

A. I did, being especially instructed to do so by the surveyor-general of Arizona.

(Witness here shown photographic Exhibits 1 to 23, inclusive.)

Q. Were these photographic exhibits shown you taken under your supervision and direction as special agent of the United States under instructions of the surveyor-general of Arizona?

A. I recognize these as the photographs which I procured to be taken in the month of July, 1880, although I have not seen them since that year. When these photographs were taken I was recovering from a very severe wound which at first was supposed to be mortal; gave Mr. Mendez, who was at that time in the office of the archives, a list of the papers in the Algodones and Sargento grants; these he brought to the hotel where I was stopping, and they were there photographed by a photographer from Tucson. I also requested Mr. Mendez to bring me several documents from the archives as near the date 1838 as he could find containing the signature of Jose Justo Milla, the work occupying several days. I will remark,  
342 however, on the first of January, 1880, I had gone to Hermosillo to examine the archives relative to this grant, and knew the documents which I required.

(Witness shown the original matrix of the Algodones and Sargento grants.)

Q. Mr. Hopkins, compare these two matrix's, one being the Algodones and the other Sargento, and state whether, in your opinion, they were written by the same person; also compare with them the testimonio that was filed with the surveyor-general of Arizona.

A. The testimonio is in a different handwriting from the matrix and is not in the same handwriting of the matrix, and might have been made by a clerk. All testimonios are copies.

Q. State whether or not these two matrix's before mentioned were written by the same person.

A. These two documents are in the same handwriting. Not that they were all written by the same person.

Q. Get the first signature of Milla, on page 3 of the matrix, and compare it under the glass with the signature "Milla" as found on page 2 of



Derecho de fin cas Urbanas (taxes on city property). State whether or not, in your opinion, they were written by the same person.

A. My opinion is that they were not. In the words "Milla" found in the tax book the entry of July 8, the letters are all disconnected, while in the same word as found in the matrix referred to are all connected  
 343 save the last letter "a" with a marked difference in the letter "M" as found in the matrix, and besides there is a manifest difference in the word taken as a whole. The rubrica under the word Milla, as found in the tax book, is gracefully made without any apparent hesitation, commencing with a small hook, while the rubrica on the matrix is evidently made slowly, as it *it* might have been traced over a glass showing a break in one place, where the pen has been taken up, and it commences with a different motion of the pen and presents a stiff appearance not shown in the one in the tax book.

Q. Compare the words "Milla" on the reverse side of page 14, and on page 15 and 17, and on the reverse side of page 17, with the word "Milla" on page 2 of the book above referred to, under the glass, and state, in your opinion, whether those in the matrix were written by the same person who wrote the word "Milla" on page two of the book. You may make the comparison with both words "Milla" on page 2 of the book.

A. I think not.

Q. Examine the signatures Jose Justo Milla, being the third signature in the matrix, and on the reverse side of page 18 of the matrix, and compare it under the glass with signature of Jose Justo Milla on page 60 of date July 5, 1836, of book on consumption of goods, and state whether, in your opinion, they were written by the same person.

A. I think not.

Q. Examine the signature next to the last in the matrix, Jose Jose  
 344 Milla, with the signature Jose Justo Milla in the book and page above referred to and state whether, in your opinion, they were written by the same person.

A. I think not.

Q. Examine the last signature in the matrix, Jose Justo Milla, with the signature on page 60 of the book referred to above. State whether, in your opinion, they were written by the same person.

A. I think not.

(Witness shown original testimonio and also one of the matrix of title exhibited to the witness V. Aguilar on yesterday.)

Q. Please examine the pages of each of these documents shown you, under the glass, and state whether, in your opinion, they were written by the same person.

A. I think not. I don't think they are the same handwriting.

Q. In your examination of the archives of Sonora did you ever find where Milla, in writing his full name, wrote it Jose Jose Milla, as appears in next to the last signature in the matrix in this case?

A. Accord'ng to my recollection, I never did.

Q. State whether, in your opinion, from all the examinations you have heretofore made and the examination made here to-day, you believe the signatures of "Milla," Jose Justo Milla, Jose Jose Milla, to be genuine or not.

A. From the examinations heretofore made by me, as well as  
 345 from the examinations made by me to-day, I am forced to reiterate the  
 opinion which I gave before the surveyor-general of Arizona, in 1880,  
 that the signature of Jose Justo Milla, as found in the grant under con-  
 sideration, are not genuine, and all the signatures examined by me to-day  
 of Milla to grant are not genuine.

Cross-examination :

Q. One of your main reason' for being suspicious of this signature was  
 founded on the fact that, at the time you made your report, you were of  
 the opinion that Jose de Aguilar was not governor of Sonora June 8, 1857?

A. I think not.

Q. Did you not report to Mr. Wasson that he was not governor on that  
 day?

A. Possibly I did ; I don't remember.

Q. Did you not also report to Mr. Wasson to the effect that the terms  
 of the petition were remarkable and unusual in this, that settlement and  
 occupation of the lands petitioned for shall be when the notorious condi-  
 tion and circumstances of the country in which the tract is situated may  
 permit?

A. I think I did.

Q. Was not one of your main reasons for being suspicious of this  
 title?

A. It was not.

346 Q. In all your examinations you thought you were careful in  
 making them?

A. I aimed to be, so far as possible.

Q. Your examination, then, was of the same character—as close as you  
 have made here to-day?

A. It was much more careful and lengthy than the one made to-day.

Q. Did you not, then, find many signatures of " Milla " where the " l's "  
 were connected?

A. I do not remember. Possible ; I can't tell.

Q. Do you say that there are no signatures of " Milla " where the " l's "  
 are connected?

A. No, sir.

Q. Did you, then, ascertain whether the " M " in his name were writt'n  
 differently at some times than at other times?

A. I do not remember.

Q. Do you say that he did not commence his " M's " differently and  
 write them differently in some than in others?

A. No, sir.

Q. Did you ascertain in you' examination that some of the rubrics to  
 his signature were disconnected?

A. That I cannot remember.

Q. Do you not know that in many of his rubrics the pen has been  
 disconnected?

A. No ; I do not know. It may be so. I do not remember that  
 347 I examined his rubrics for the special purpose to ascertain whether  
 they were connected. I remember having examined them as to  
 their general appearance and expression. More than that I do not  
 remember.

Q. Do you know what kind of a pen was in use here in 1838?

A. I do not. I presume, however, a quill pen.

Q. Did you, then, examine the signatures of his for the purpose of ascertaining whether or not his rubrics commenced with the same flourish or stroke?

A. I do not remember.

Q. Did you examine his rubrics for the purpose of determining the inclination, heaviness, or lightness of the stroke?

A. I do not remember. All that I now remember is that I made a careful comparison of the rubrics in order to ascertain their similarity or dissimilarity.

Q. Are there not many hundreds of his signatures in this office?

A. I presume there are; he was a public officer.

Q. Didn't you ascertain that fact in your many examinations of this grant before?

A. Perhaps I did.

Q. You have not examined but four of his signatures to-day?

A. I think I have only examined only four. How many I examined before I don't remember.

Q. Does not Milla write his name differently as to special characteristics, like connections or disconnecting the letters of his Christian name?

A. He probably does.

Q. I now ask the same question as to the word Milla in his name?

A. He probably does.

Redirect by REYNOLDS:

Q. In your examinations prior to 1879 state whether they were made with a view of ascertaining by comparison the genuineness of the documents or merely to ascertain the existence of the grant and the state of the archives in reference thereto?

A. They were made only to ascertain what records were found in the archives, grants in the southern portions of Arizona.

R. C. HOPKINS.

JOSEPH R. REED,

*Chief Justice.*

Mr. REYNOLDS: I offer in evidence the Government's photographic Exhibits 1 to 23, inclusive.

Mr. STEVENSON: I desire to object to the introduction of these exhibits. I make no objection to any photographs that they may offer; but I object to the speech of the special agent attached to that document, and do not think it is proper to go in the record; also the writing of the surveyor-general of Arizona on the back of photographic exhibits of the Government.

By the COURT: Admitted, subject to the objection.

349 Which said exhibits are enumerated as follows: Being twenty-three photographs of different sized, on like number of pages of a book endorsed: "El Paso de los Algodones Grant. Photographic Exhibits 1 to 23, inclusive. On the part of the United States," which said photographic exhibits are identified from one (1) to twenty-three (23), inclusive. It being impossible to attach said exhibits hereto, the same are put under separate cover, forwarded herewith, and made a part of this transcript.

Mr. REYNOLDS: I offer the report of the surveyor-general on the case, and also offer supplemental report of surveyor-general, signed by him, and attached to the back of these photographic exhibits, marked defendant's Exhibits B and C, respectively.

Mr. STEVENSON. Objected to as incompetent.

Which said Exhibit B is in the words and figures, following to wit:

U. S. SURVEYOR-GENERAL'S OFFICE,  
TUCSON, ARIZONA, Aug. 12th, 1880.

The papers upon which the examination of this case is based were filed in this office Dec. 22, 1879, and they are, with the records in relation thereto, found in the archives of the Mexican State of Sonora for a place called "El Paso de los Algodones," near the junction of the Colorado and Gila rivers. The terms of the petition are remarkable in some particulars, in that they are not found in the petition of any other case within my knowledge. Petitioner states that he makes the registry under the  
350 conditions that the settlement and occupation of the land petitioned for shall be when the notorious condition and circumstances of the country in which the tract is situated may permit, setting forth that the said tract lay in a desert country, and one uninhabitable, because of the hostility of the savages. It was quite as unusual for citizens of Mexico to petition for grants of lands which could not be occupied as it was for the Mexican authorities to grant lands without the conditions of ability and purpose to immediately or within a stated time inhabit and cultivate or graze the same.

Early in the investigation of this case several circumstances therewith aroused suspicions in my mind as to the bona fides of the papers upon which title to said land was based. I therefore regarded as necessary that a special and very critical examination of the proper archives in Sonora be made, so far as they might affect this case, to th' end that my suspicions be removed or confirmed. I caused such an examination to be made (in January last) by Mr. R. C. Hopkins of this office, he being specially fitted for the work. The leading facts discovered by him and reported to me are embraced in his sworn testimony, which is a part of the transcript of the case, and are as follows:

That on the same day that Fernando Rodriguez petitioned for the place of El Paso de los Algodones he also petitioned for a place called "La Punta de Sargento," situated on the Gulf of California, containing ten square leagues.

351 That the language in petitions in the two cases is very similar; that the several orders in the proceedings in both cases are dated on the same days, are in the same handwritings, and these handwritings and these handwritings are different from all the handwritings in the proceedings of the various grants made and recorded in 1838; that neither of said grants are registered in the book of Toma de Razon for the year 1838, nor in any other book of record in the archives; that these two grants purport to have been made by Jose Justo Milla as contodor (auditor) of the treasury, acting "por ministerio de la ley," or ex officio, Jose Ma. Mendoza being at that time treasurer-general; that the same names appear in both cases as assisting witnesses in the proceedings; that the signatures of Jose Justo Milla, where they occur in both cases, appear to

have been written with the same ink and bear a striking resemblance to each other, and these signatures are notably different in appearance from those of Jose Justo Milla as found in the archives on documents of undoubted genuineness of near the same date of these grants, and that the difference is especially manifest in the rubrica or flourish attached to the names; that one of the signatures of the said Milla as found in the original proceedings of the Paso de los Algodones grant and now in the Mexican archives of Sonora is written thus, "Jose Jose Milla;" that the signatures of Santos Vigarria and Jesus Trasquillo, whose names appear as assisting witness in the proceedings of the two grants, are notably different in appearance from the same signatures as found on genuine documents of near the same date and now in the archives; that the grants of Paso de los Algodones and La Punta del Sargento are both dated April 12, 1838; that to the proceeding *a* in both cases is attached a certificate purporting to be signed by Jose Justo Milla that the purchase money was paid by the grantee, and also one by Juan J. Encinas, certifying that the petitioner, Rodriguez, possessed sufficient means to stock the lands petitioned for.

In view of the extraordinary facts bearing on these cases, as reported by Mr. Hopkins and summarized above, I deemed it absolutely necessary to procure photographic copies of some of the signatures and portions of the documents referred to as they existed in the Mexican archives in Sonora to enable me to fairly, clearly, and fully place the case before Congress, and such copies are appended hereto as *inhibits* to this report, so arranged and marked as to be readily understood. An inspection of these photographic exhibits shows:

1. That the petitions for the grant of Paso de los Algodones and La Punta del Sargento were made on the same day by the petitioner, Rodriguez, using almost the same language in both petitions, in the Algodones describing the land as being "complemente dedierto (completely desert) and in the Punta del Sargento saying that the land is "enteramente dedierto y arido" (entirely desert and arid), and in both cases agreeing to occupy the land when the conditions of the localities might permit him to do so.

- Nos. 1 and 2 of the photographic exhibits show the petition of Rodriguez for El Paso de los Algodones and Nos. 10 and 11 are copies of his petition for La Punta del Sargento. That Rodriguez should, on the same day, petition for two tracts of land hundreds of miles apart, both desert and one arid, for purposes of cultivation, to be occupied at some future time, is certainly remarkable and somewhat astonishing in view of the laws, usages, and customs of Mexico governing the granting of public lands.

2. That the signatures of Jose Justo Milla, the granting officer, in both grants are made by the same hand.

3. That a comparison of the signatures of Jose Justo Milla as found in the title papers of "El Paso de los Algodones" and the La Punta del Sargento" with the signatures of that officer as shown in Nos. 15, 16, and 17 of photographic exhibits demonstrates beyond question that they are but bungling forgeries.

4. That if there were any doubt as to the character of these signatures the fact that No. 8 of photographic exhibits shows the name of Jose Justo Milla written "Jose Jose Milla," would settle that doubt.

Milla was evidently no party to this fraud. Had he been, even if imposed upon, he would have signed his name accurately and in his accustomed manner; and, if not imposed upon, the strong presumption is that he would not have performed his part in such a careless, awkward, and incorrect way as appears in the original proceedings now in the Sonora archives, and perfectly illustrated in the photographic exhibits. It is

as extremely improbable that Jose Justo Milla signed his name,  
354 under any any circumstances, Jose Jose Milla as that Joseph John Brown would sign his "Joseph Joseph Brown" to a document conveying large interests and the doing of which would involve great responsibility.

5. That a comparison of the signatures of Jesus Trasquillo as found in the title papers of the two grants referred to with those on Nos. 18, 19, and 20 of photographic exhibits, show beyond doubt that they were not made by the same hand, and a like comparison shows that the signature of Santos Vigarria as found in the said grants is unlike the signature of Santos Vigarria as shown by No. 21 of photographic exhibits.

6. That No. 22 of photographic exhibits shows the page of the book of "Toma de Razon," in which the grants of El Paso de los Algodones and La Punta del Sargento should have been registered, if made on April 12, 1838, as set forth in the title papers; and since twenty-one (21) other grants made in 1838 are found registered in said book, it is a very suspicious circumstance that neither of these grants are therein registered, nor are they in any other book of record.

It will be observed that the note of registry as found on the expediente of the grant of El Paso de los Algodones merely states that "that the grant is registered in the corresponding book," without referring to page.

In notes of registry on expedientes it was customary to refer to the page of the book on which the registry was made. The omission  
355 to register these two grants in the "corresponding book" was one of necessity, because it was impossible to make entry of them in said book at the proper place and of the date April 12, 1838, as shown by photographic exhibit 22.

The inquiry naturally arises as to the motive for manufacturing a grant for the desert and arid tract of La Punta del Sargento. The answer to this seems to be: The rancho of El Paso de los Algodones was the objective tract in the proceedings, and that of the Punta del Sargento was a fabrication to sustain the Algodones on the hypothesis that the Algodones was antedated as well as forged; the parties engaged therein would very naturally suppose that the bona fides thereof might at some time be inquired into, and if the records in the archives of Sonora would show a grant executed simultaneously with it the fact would strongly tend to prove that it (the Algodones) was made in good faith and at the time of its date.

It is true, a careful inspection of the record of the grant of La Punta del Sargento would reveal its superior character, but such an inspection would be highly improbable in connection with an examination of another claim before the tribunals of a foreign county.

The title papers in this case are certified to by Jose Ma. Mendoza to be genuine, who for many years was treasurer-general of the State of Sonora, and also by Jose de Aguilar, ex-governor of the State and at present the



leading lawyer of Sonora. Such certificates as these are unusual to grants of undoubted genuineness and excite suspicion among men well informed in the premises. The inquiry naturally arises, why should the Algodones grant be supported by this class of testimony any more than other grants made by the Mexican authorities of Sonora? No genuine Mexican grant papers filed in this office have supporting certificates.

It will be observed that Jose Aguilar, in his certificate, styles himself governor of the State of Sonora, whereas the history of the times shows that at the date of his certificate, June 8, 1857, Ignacio Pesquerra was governor of said State. This indicates that the certificate was given without much care. Notwithstanding the certificates of Mendoza and Aguilar are genuine and may have been executed in good faith, they do not give any value to a fraudulent title paper. The records of the United States district court for California, and also the United States Supreme Court, relating to title to grants of land by the Mexican authorities, repeatedly show that the testimony of Mexican officials was not and could not be accepted as conclusive. The cases in point are so numerous as to render citations superfluous.

#### LAND NONMINERAL.

Little testimony appears in reference to the mineral character of the land in this case. I have passed over it many times, and personally know it to be nonmineral; that is, it is utterly worthless for minerals. It is nearly all flat and rich, lying in the Colorado River bottom and skirted by low and barren table-land far from mountain or any elevated country. Feeling certain that the United States will never confirm the claim under consideration, I deemed it unnecessary to swell the record with oral testimony on incidental points.

#### DERAIGNMENT OF TITLE.

The title of this alleged grant seems to be satisfactorily deraigned. Such as it is it rests in the Colorado Commercial and Land Company, and, if genuine, should be confirmed to the said company.

#### CONCLUSION.

I have patiently investigated all the important facts bearing upon this case, and have brought "the title papers to the test of the genuine signatures" at considerable expense to the Government and delay to the claimants and an interested public. I have illustrated the fraudulent character of the title papers by perfect photographs of parts of documents in the Mexican archives in the State of Sonora, the originals of which could not be obtained nor lawfully removed from the custody of the Mexican officials. Some of the documents referred to have no connection with any books of record in the archives, and but for the photographs taken they might have been abstracted from their place on file, and thus prevented any clear demonstration of the fraudulent character of the claim under consideration. Aside from the principle involved in this case, the land in question, owing to its locality, has a large pecuniary value, and therefore

I pursued the investigation until every reasonable doubt about the true character of the claim was removed. I have no hesitation in pronouncing the title papers to the rancho of "El Paso de los Algodones" both forged and antedated; therefore, my recommendation is, that the said claim be not confirmed, but rejected.

JOHN WASSON,  
*U. S. Surveyor-General.*

Which said document bears the following endorsements: No. 9½ El Paso de los Algodones. F. No. 13. Opinion and recommendation by surveyor-general. Dated August 12, 1880. Recorded in journal vol. 2 pages 20 to 24. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy clerk. Filed August 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

Which said Exhibit C, heretofore introduced in evidence on behalf of the defendant, which is a supplemental report of said surveyor-general, is attached to and a part of the book of photographic exhibits heretofore incorporated in and made a part of this transcript, and is explanatory to said exhibits, is attached to the back page thereof, and reference is hereby made thereto for defendant's Exhibit C.

Mr. REYNOLDS. I offer report of R. C. Hopkins, made to the surveyor-general. (Defendant's Exhibit D.)

Mr. STEVENSON. I object to it as incompetent.

359 Which said Exhibit D is in the words and figures following, to wit:

Before the surveyor-general of the United States for the Territory of Arizona.

In the matter of the petition of the Colorado Commercial and Land Company for the confirmation and survey of the Rancho El Paso de los Algodones in the Territory of Arizona, situated at the confluence of the rivers Gila and Colorado, containing five square leagues, more or less.

Interrogatories to be administered to Rufus C. Hopkins, a resident of the city of Tucson, in the county of Rima, in said Territory.

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Interrogatory 2nd. Have you ever resided in San Francisco, in the State of California? If yea, how long did you reside there, and what official positions, if any, did you occupy during your residence there?

Interrogatory 3rd. Did you ever occupy any official position in or in connection with the office of surveyor-general of the United States of California? If yea, what position? How long did you occupy it, and what were your particular duties in that position?

360 Interrogatory 4th. Do you read and speak the Spanish language? Of so, for how long a time have you been able to speak and read it?

Interrogatory 5th. State if you, during your residence in California, were accustomed to the examination of the Mexican and Spanish title papers having reference to the grants of land made by the Mexican Gov-

ernment within the limits of California before its cession to the United States. If so, did you ever have custody of them, and for how long a time?

Interrogatory 6th. State particularly and fully your opportunities for acquiring a knowledge of the Spanish language, of the signatures of the officers executing or certifying the grants spoken of, and of particular rules or regulations adopted and observed with reference to the making of said grants.

Interrogatory 7th. State if you hold any official position now in the office of the surveyor-general of Aruzona, what it is, and what your duties are.

Interrogatory 8th. Didn you ever visit the State of Sonora in 361 Mexico, or the City of Mexico, or both, for the purpose of investigating the titles to lands in Arizona that had been granted by the Republic of Mexico or the State of Sonora? If yea, by what authority did you go there and how far did your investigations extend?

Interrogatory 9th. In those investigations did you find or examine the original title papers or records of the grant of El Paso de los Algodones hereinbefore mentioned? If yea, state how thoroughly or critically you examined them.

Interrogatory 10th. Are you th' same person who deposed to the correctness of the translations of the title papers of the said Rancho El Paso de los Algodones, which appears attached to the written translation on file in the surveyor-general's office of Arizona which purports to have been subscribed and sworn to by you in the city and county of San Francisco, California, December 6th, 1873? If yea, state if the translation was made by you.

Interrogatory 11th. If you know of any other matter or thing relating to the title papers of the said rancho, tending to throw any light on the application for the confirmation and survey of said rancho, or which may be of importance in respect to said application, state the same as fully as though specially interrogated thereto.

L. ALDRICH,

*Attorney for Petitioner, 20 Montgomery St., San Francisco.*

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LEWIS LILLIE,

*Secretary of the Colorado Commercial and Land Company,  
20 Montgomery St.*

The said RUFUS C. HOPKINS, being first by me duly sworn true answers to make to the foregoing interrogatories, answered as follows:

To interrogatory 1st. My name is R. C. Hopkins, age 64 years, occupation clerk in the office of the U. S. surveyor-general for Arizona, and at present reside in Tucson.

To interrogatory 2nd. I resided in San Francisco, California, from 1850 to April, 1879, and during my residence in that place I had charge of the Spanish archives in the office of the U. S. surveyor-general for California from the year 1855 till the commencement of the year 1879, with some interruptions.

To interrogatory 3rd. I have answered this interrogatory in my answer to 2nd interrogatory.

To interrogatory 4th. I read and speak the Spanish language, and acquired a knowledge thereof in early life.

To interrogatory 5th. During my residence in California for 24 years I was custodian of the grants of land made by the governments of  
363 Spain and Mexico within the limits of the State of Cal'a before the cession of the territory to the United States.

To interrogatory 6th. I acquired a knowledge of the Spanish language in early life by study; for twenty-five years I have been daily conversant with the language, the handwriting, and signatures of many Spanish and Mexican officials, and with the rules and regulations observed in the making of land grants.

To interrogatory 7th. I occupy the position of clerk and Spanish translator in the office of the U. S. S. Gen'l for Arizona.

To interrogatory 8th. In the early part of 1873 I visited the State of Sonora and the City of Mexico in the service of the Texas Pacific Railroad Co. for the purpose of examin'g the records in relation to grants of land made by the Spanish and Mexican governments of lands within the present Territory of Arizona. During the examination I made a list of such grants as I found in the archives at Sonora of lands within the Territory of Arizona. Subsequently, in the month of April, 1879, I again went to Sonora as special agent of the Government for the purpose of obtaining from the archives all data therein found in relation to Spanish and Mexican grants of land within the Territory of Arizona.

364 To interrogatory 9th. In both of the examinations above referred to I examined the title papers of the rancho of El Paso de los Algodones.

To interrogatory 10th. I am the same person who deposed as to the correctness of the translation of the title papers of the rancho El Paso de los Algodones on file in the surveyor-general's office for Arizona; said translation was made by me.

To interrogatory 11th. In the early part of 1873, I was employed by the Texas Pacific R. R. Co. to make an examination of the Spanish and Mexican archives of the State of Sonora and to report such grants as I might find located within the present Territory of Arizona. I made the examination required and reported the result thereof to the company.

Among the records of the grants there found were those of the rancho of Paso de los Algodones, situated at the junction of the Colorado and Gila rivers, containing five square leagues.

In this examination no very critical inspection was made of the records, the object of the examination being to ascertain what records of grants of lands in Arizona were then on file in the archives.

Subsequently to the making of the examination above referred to, I was employed by the claimants of the rancho of Paso de Algodones  
365 to make a translation of the "testimonio" or certified copy of the original expediente of the grant. To this translation I appended a certificate as to the correctness of the same, and also certifying to the genuine character of the signature of Jose Ma. Mendoza, which appears officially in the title papers. I also from memory stated that the grant of Paso de los Algodones was registered in the book of Toma de Razon, which book forms a part of the Sonora archives, and contains a registry

of grants made from the year 1831 to 1849 and consequently embracing the year 1838, the year in which the grant of El Paso de los Algodones purports to have been made.

In the examination made by me of the Sonora archives during the last year as special agent of the Government I found that in the certificate I had given some years since from memory in relation to the original title papers of the rancho of Paso de los Algodones, I had made a mistake as to the grant being registered in the book of Toma de Razon; a note of the registry if made on the original expediente in the archives, but the grant is not registered in the book of Toma de Razon referred to. This defect I noticed in my examination as special agent of the Government and so reported; but inasmuch as the bona fide character of the title papers are certified to by Jose Ma. Mendoza, for many years treasurer-general of the State of Sonora, and Jose de Aguilar, ex-governor and the leading lawyer of Sonora, I thought that the omission to register the grant in the book of Toma de Razon might have been the result of accident or neglect.

366 Subsequently, in casual conversations with persons whose antecedents would naturally give them opportunity of knowing something about the history of this grant, remarks were made calculated to awaken suspicions as to the bona fide character thereof.

In view of these facts, the surveyor-general, by letter of instructions dated January 14, 1880, directed me to make another examination of the archives in Sonora, in order if possible to learn something further of El Paso de los Algodones.

In this examination of the archives, I found on the conclusion of the measurement of the Paso de los Algodones, the officers engaged therein went to a point on the coast of the Gulf of California, called Punto del Sargento, situated opposite the island of Tiburen, for the purpose of surveying a rancho of that name, located at that point.

In the course of my examination I found:

1st. That the ranchos of Paso de los Algodones and La Punta del Sargento were petitioned for by the same person (Fernando Rodrigues) and on the same day the petition asking for the five square league at the Paso de los Algodones, and ten square leagues at the Punta del Sargento.

2d. That the language of the two petitions are very similar.

3rd. That the several orders in the proceedings of the two cases were made on the same days, and are in the same handwriting, and these handwritings differ from all the handwritings in the proceedings of the various grants made during the year 1838.

4th. That neither of the grants of Paso de los Algodones nor  
367 Punta del Sargento are registered in the book of Toma de Razon for 1838, although other grants made during that year are found registered in their proper places in said book.

5th. That the grants of El Paso de los Algodones and Punta del Sargento purport to have been made by Jose Justo Milla, as "contador" or auditor of the treasury, acting "por ministerio de la ley" (ex officio), Jose Ma. Mendoza being at that time treasurer-general, and that the same names appear in both cases as assisting witnesses in the proceedings.

6th. That the signatures of Jose Justo Milla, where they occur in the proceedings of both cases, appear to be written with the same ink, and bear a striking resemblance to each other.

7th. That the signatures of Jose Justo Milla as found in the proceedings of these two grants differ in appearance from his signatures as found in the archives on documents of near the same date as these grants; that this difference is more manifest in the rubrica or flourish than in the writing of the name; the rubrics, as found in these grants, showing much hesitation, while the rubrics to other signatures are free and graceful, appearing to have been made without thought or hesitation.

8th. That one of the signatures of Milla as found in the original proceedings of the grant of Paso de los Algodones is written thus "Jose Jose Milla," instead of "Jose Justo Milla."

9th. That the signatures of Santos Vigarria and Jesus Trasquillo, where names appear as assisting witnesses in the proceedings of these two grants, are different in appearance from the writing of the same names as found in the archives of near the same date, and this difference is particularly manifest in the formation of the rubricas.

Question (by SURVEYOR-GENERAL). From all the examinations you have made of the original title papers in this case and of the Government archives of the State of Sonora in relation thereto what is your opinion as to the character of the grant of El Paso de los Algodones?

Ans. I am of the opinion that the signatures of Jose Justo Milla where they occur in said original title papers were not made by his hand, and that therefore the grant is not genuine.

R. C. HOPKINS.

Subscribed and sworn to before me this 30th day of July, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,  
U. S. Surveyor-General.

Which said exhibit bears the following endorsements: In the matter of the "Paso de los Algodones. Ex. D. Gov. Testimony of R. C. Hopkins. No. 9 in docket, page 8 in journal, vol. 2. Filed June 2, 1892. James H. Reeder, clerk, by Thos. B. Baldwin, deputy. Filed July 30, 1880. John Wasson, sur. gen. Filed Oct. 18, '92. James H. Reeder, clerk, by I. L. Chaves, deputy clerk.

369 WILL. M. TIPTON, being duly sworn, testified on behalf of the defendant in English as follows:

Direct examination by Mr. REYNOLDS, U. S. attorney:

Q. What is your official capacity, if any?

A. Special agent of the court of private land claims, detailed to duty in the office of the United States attorney for that court.

Q. State if you are familiar with the Spanish language.

A. I am.

Q. Read, write it, and translate it into English?

A. Yes, sir.

Q. State what experience you have had in the examination of Spanish and Mexican documents in the archives of the surveyor-general of New Mexico.



A. I was connected with the office of the United States surveyor-general of this Territory for about sixteen (16) years, eight of which I was translator and custodian of the archives, in which position I had occasion to translate many documents, to examine a great many more, and outside of my official position I frequently made translations and copies of old Spanish documents for different attorneys in the Territory.

Q. I will get you to state fully if you have made any examination or investigation in the archives at Hermosillo, State of Sonora, Republic of Mexico, with relation to the Algodones land claim; and, if so, what examination, what you found, how you happened to make the examination, and all about it.

A. I made an examination of the original expediente in the matter of the El Paso de los Algodones grant, and made a comparison of the different handwritings on that expediente with the expediente in the matter of the Punta del Sargento grant, and also examined a great many other documents in the archives, all of which examination was under and by the direction of the United States attorney for this court.

Q. Give the result of your examination, the condition of the archives, and the condition of these papers.

A. I have some notes here [refer'ing to notebook]. I made a particular comparison of the expedientes in the matter of the Algodones and the Sargento grants, the result of which is practically what I have here in my memoranda [refers]. The expediente in both these cases was upon twenty written leaves, and in addition to the written leaves there were two leaves forming a cover, with the exception that in the Algodones case there were two other leaves, which had been evidently recently attached to the expediente; one a power of attorney by Mr. E. M. Sanford to Bartholomew Rochin, who is in charge of the archives of the office of treasurer-general in Hermosillo; and also a petition by Mr. Rochin, asking permission to have a copy made of the grant. I simply mention that fact to show that it is the only difference in the two expedientes as far as the number of pages is concerned. The paper in both of the expedientes, as far as the written leaves are concerned, are are same kind, and is heavier paper and has a rougher surface than the leaves forming the cover of the expedientes.

The petition of Fernando Rodriguez in both expedientes is in the same handwriting, and is not in the handwriting of Rodriguez himself. Both petitions are dated upon the same day; I believe at Hermosillo. The next instrument following the petition in each case is an order appointed a surveyor to make the survey of the tracts. The date in both of the instruments and the handwriting are the same. Following this in both expedientes, is what in the Spanish is called the act of obedience, in which the surveyor appoints subordinates to assist in making the survey. The officers in both cases were the same, and the date of the instrument the same. According to the expediente in the Algodones case the survey was made on the 3rd of February, 1838, and by that of the Junta del Sargento the survey was made on the 20th of the same month. On February 4th, 1838, the officers made an entry in the expediente of the Algodones grant of their intention of going to the PJunta del Sargento, and on the 21st of February they made an entry in the expediente of the Sargento of their intention of going to Arispe to complete the expediente. From that point

in the expedientes in both cases, up to the conclusion, the proceedings in each were practically the same, with the exception the difference of the name and area of the two tracts, and with the exception of one place, in the Algodones grant, in the entry of the proceeding of the first  
372 almoneda, the witnesses were different from those in the matter of the Sargento. I believe that is all on that point.

Q. Do you remember whether the officials who alleged to put Rodriguez in possession of these two grants were the same?

A. Yes, sir. The man who made the survey and his attendants were the same; and from there on, with the exceptions I have made, each proceeding in the Algodones was practically the same as the corresponding one in the Sargento case.

Q. Did you compare these documents with other documents on file in that office?

A. I examined a great many other documents; some were expedientes in the matter of different land grants, also books of account, and also letters upon subjects to which I paid no attention, because I was simply looking at the handwriting.

Q. What was the result of your examination and comparison of the writing in these two grants with handwriting of other documents?

A. I didn't see any handwriting in any of the documents which I examined there which I felt certain was the same as any of the handwritings of these two expedientes.

Q. To what extent did you examine the matrixes for that same year that were on file?

A. I can not say. I didn't particularly examine the matrixes for that year. There were a great many documents on the table where we were working; some were of that year; some prior to the date of this  
373 grant, and some subsequent to this date; I can not say how many I examined of any particular year; I didn't make any note of that.

Q. Did you examine the Toma de Razon?

A. Yes, sir.

Q. What was the result of your examination with reference to the record of it?

A. I found that upon the fifty-fourth leaf of the book Toma de Razon, on which the entry of these two grants would be expected to be found, I found the entry of the grant San Pedro del Templo, the title to which was issued on the 10th of April, 1838, and following, the Lajitas, issued on the 29th of the same month, that there was no entry of the issuing of the title in the matter of the Algodones grant nor the Sargento grant.

Q. Did you examine the writing in the entries of the Toma de Razon, with reference to that of the Sargento and Algodones grant?

A. No, sir.

Q. Did you examine the endo'sement on the Algodones and Sargento of the fact that they had been recorded? And do you know whether that was in the same handwriting of the Toma de Razon?

A. What handwriting?

Q. For the 10th of April and 29th of April?

A. Before I answer that I must know what you mean; do you mean the note on the expediente that the title had been recorded, or the note in the book, that the title had been recorded?

Q. In the book?

374 A. I didn't make any particular examination with a view to fixing that in my mind, but my recollection is that what Judge Sanford now refers to as the "Toma de Razon" is in a different handwriting than that of the entry of these two grants which I have just spoken of.

Q. Did you notice whether or not the endorsement on the Algodones which Judge Sanford called the "Toma de Razon," is the same handwriting as any of the body of the instrument?

A. I think it is in the same handwriting as the thirty offers of sale, if I remember rightly.

Q. Is the handwriting on the Toma de Razon for the 10th of April, 1838, and the 29th of April, 1838, are in the same handwriting as any of the handwritings of the Sargento or Algodones expedientes?

A. No, sir; to the best of my knowledge they are not.

Q. Do you know how much land was grant' in the Sargento case?

Mr. STEVENSON. I object to that as immaterial.

Q. (Mr. REYNOLDS.) How much land is designated therein as having been granted?

Mr. STEVENSON. Objected to as incompetent and immaterial.

By the COURT. Admitted, subject to the objection.

A. There were ten sitios granted in the Sargento case.

Q. I will get you to state if, in your examination, you made any investigation of the instruments, designated in Mr. Robinson's deposition, of grants made, and not having been recorded, in the Toma de Razon,

375 with a view to determining whether or not they were recorded in the Toma de Razon; if so, what was the result of your examination?

A. I think Mr. Robinson stated—I don't recollect his exact words—that he knew of a number of grants, the date of which he mentioned, which were not in the Toma de Razon, where they should have been entered. Of these grants which he mentioned I found in the Toma de Razon all but one, and the latter I didn't succeed in finding, because I didn't know its date and consequently didn't know where to look for it without spending a great deal of time. The grants which Mr. Robinson said were not in the Toma de Razon, and which are there, are the following: The Saguaral, issued on the 31st of January, 1838, the entry found on the first page of leaf 52 of the book; Huerta de Jalapa, issued on the 10th of February, 1838, on the first and second pages of leaf 52; La Cienaguita, issued on May 21st, 1838, found on the second page of leaf 54; Santa Gertrudes, issued on the 30th of May, 1838, and entered on the second page of leaf 54; La Pasion, issued May 30, 1838, and found on the first page of leaf 55; Las Centraditas, issued June 30, 1838, and found on the second page of leaf 56; San Rafael del Carrizal, issued July 30, 1838, found on the second page of leaf 56.

Recess taken until 2 o'clock.

At 2 o'clock case continued.

Mr. TIPTON—continued.

On direct examination by Mr. REYNOLDS, U. S. attorney:

Q. In your examination of the archives, as well as examination of the book called "Toma de Razon," did you examine it for the  
376 year 1838, with reference to the Sargento grant?

A. Yes, sir.

Q. Did you make a comparison between the Sargento and Algodones grant?

A. Yes, sir.

Q. What is their condition as to similarity?

A. I think I said they were practically the same, only those differences which we would naturally expect to find in grants for different tracts with different areas.

Q. Do you remember the recitals, the general recitals, in the petition of these two grants?

A. In a general way.

Q. I will get you to state what, if any, similarity existed between the recitals in the petitions.

Mr. STEVENSON. Objected to as incompetent.

By the COURT. Admitted, subject to objection.

A. They were both petitions for certain tracts of land, describing the location of the land in each instance; the only very singular similarity was the fact that they both recited that the possession would be taken of the land, and the land would be cultivated as soon as the notorious condition of the country would permit.

Q. Did you examine the petition in any other grants down there and matrixes—

A. Not critically.

377 Q. — with a view to ascertaining whether they were in the same handwriting as the Sargento and Algodones, and as to their contents?

A. I don't know that I examined them critically.

Q. State what, if any, inquiry you made with reference to the account book of the contador for that year, or the auditor.

Mr. STEVENSON. I object to it as incompetent.

By the COURT. Admitted, subject to objection.

A. I inquired for a book in which the entry of the payment of the purchase money for these two grants could be found; the keeper of the archives couldn't find it, and that's the reason I did not get to see it.

Q. What statement did he make to you, if any, in reference to it?

Mr. STEVENSON. Objected to as incompetent.

By the COURT. Admitted, subject to objection.

A. He said that he could not find it.

Q. What was the date of the Sargento grant?

A. The date of the issuing of the title was the 12th of April, 1838.

Q. What was the date of the petition?

A. I don't recollect; I stated this morning by reference to my memoranda.

Cross-examination by Mr. STEVENSON for petitioner:

378 Q. I wish you would be good enough to explain fully to the court the way this book of Toma de Razon is made up, what it stands for—I do not mean its contents, but how made up.

A. The book of Toma de Razon, in which the entries were made of the issuing of land titles from the 24th of October, 1831, to the 6th of December, 1849, is a manuscript book, the leaves of which have been sewed together, and which was bound in a white cover, something like sheep-

skin. The book consisted of 86 leaves, 85 of which were numbered on the upper right-hand corner, the first page of each leaf; the number on the last leaf, the 86th, was torn off after it was numbered; 82 of these 86 leaves were written on both sides; 68 of them were on paper of the 4th stamp for the years 1831 and 1832; 6 of the leaves were upon paper of the 5th stamp for the years 1844 and 1845; 4 leaves were not upon what is commonly called stamped paper, but upon paper bearing the seal of the treasury of Sonora; and 8 of the leaves were upon common paper without any stamp and without any seal of any kind.

Q. When you speak of leav's—did not this book originally consist of loose sheets of paper, which were at some time sewed together?

A. I' was evidently sewed together at one time; yes.

Q. Did you notice whether each of these pages was signed by any official, or by the rubric of any official—at the bottom of the leaf was there not a rubric of any official?

A. I don't recollect having noticed that.

379 Q. Do you not know as a matter of fact that there was a rubric on each of those pages of some officer?

A. I didn't pay any attention; there might have been such a thing.

Q. Explain what is meant by borrador.

A. I understand it to be a rough draft of an instrument, and unsigned instrument.

Q. Do you mean these loose sheets on which there was writing?

A. If they were not signed I should call them borradores.

Witness excused.

H. O. FLIPPER called, and, being first duly sworn, testified on behalf of the defendant, in English, as follows:

Direct examination by Mr. REYNOLDS, U. S. attorney:

Q. What is your residence and occupation?

A. Nogales, Arizona; civil engineer.

Q. How long have you been engaged in that business?

A. I have been surveying in this part of the country since 1882.

Q. In what connection?

A. In connection with land titles. I have examined four or five thousand Spanish and Mexican titles, and surveyed as many grants.

Q. You speak and translate the Spanish language.

A. Yes, sir.

380 Q. Were you ever in the employ of the Mexican Government?

A. Never.

Q. I will ask you to state whether or not you have ever had occasion to survey grants made or purposed to have been made by the State of Sonora?

A. I have; quite a number.

Q. State what, if any, examination you have made of such titles?

A. I have made examinations of grants, and reported to the department of public works—

Mr. STEVENSON. I object to such examination as incompetent.

By the COURT. Admitted, subject to objection.

Q. I will get you to state what the condition of the titles examined by you were in reference to their completeness?

Mr. STEVENSON. Object to the question as incompetent, for the reason that the witness has not shown that he is qualified to testify relative to the completeness or otherwise of said titles.

By the COURT. Admitted, subject to objection.

A. The titles that I have seen, issued by the States of Sonora and State of Chihuahua, seem to be complete so far as they go, but they lack the approval of the General Government.

Mr. STEVENSON. Object to the answer, and move the court to strike same out.

By the COURT. Passed, subject to the objection.

A. I know of one case where the title has been declared null and  
381 void when the land was given to an American company—the Gonzales tract in Sonora.

Mr. STEVENSON. Objected to as incompetent.

Q. What, if anything, Mr. Flipper, in your examination, and the titles you have come in contact with in Mexico, what has been their condition relative to the action thereon by the State or National Government?

A. I don't think I understand what you are getting at.

Q. You are a surveyor, and have been required to report to the Federal Government on all titles issued by the States?

A. Yes, sir.

Q. What, if any, action was taken by the National Government upon these grants, based upon the reports made by the surveyors?

Mr. STEVENSON. Objected to; witness is now attempting to testify as to the action of the General Government, which testimony is incompetent.

By the COURT. Admitted, subject to objection.

A. I know cases in which titles to lands which had been issued by the States have been declared null and void.

Q. I will get you to state what, if any, action that you know of has been taken by the parties claiming grants under title from the States so far as the National Government is concerned; what action has the National Government required to be taken?

Mr. STEVENSON. Objected to.

A. I know of holders of these State titles that have applied to  
382 the General Government for a confirmation of such titles.

Q. Do you know why this was done?

A. Because it was held, under the order of November, '53, they had been declared null and void by the General Government—Santa Anna's decree.

Q. What, if anything, do you know about the requirement of the Government of the holders of State grants registering in regard to procuring titles?

A. I know that several holders of State titles have had them confirmed by the General Government, and they were given new titles as repurchases.

Q. How many do you know of that kind?

A. I know of three, and I know of the parties: Nogr— de El—, ex-Governor Luis Terrazas, and Don Pedro Zuloaga. I know of two other grants in Sonora in the same condition. In one case, the Altar—, they declared that the title issued by the State of Sonora was null and void.



Q. I will get you to state, as one of the surveyors having occasion to investigate these land titles, the right of the National Government over the land in the State?

A. The public lands in Mexico have belonged to the Federal Government since Cortez landed in Vera Cruz.

Q. Public lands of the nation; what does that have reference to?

A. The public lands in all the States of Mexico.

383 Cross-examination by Mr. STEVENSON, for petitioner:

Q. How long have you been in this business?

A. I have been surveying ten years in Mexico.

Q. You have been surveying in Mexico for ten years; by whom have you been employed?

A. Principally American companies.

Q. What business was you engaged in prior to that time?

A. I was in the Army.

Q. What experience did you have with Mexican grant titles in the United States Army?

A. While in the Army, none whatever.

Q. Then, all the experience you have had is the experience derived while a surveyor?

A. My business required me to search land titles, and I took a course of law at the Military Academy—the United States Military Academy at West Point, New York.

Q. Are you employed by anyone who is interested in establishing grants issued by the State of Sonora are not genuine?

A. I am not.

Q. Are you interested in the Nogales grant?

A. I have a piece of land there; I am one of the settlers.

Q. Are you not interested in defeating that grant before this court?

A. The only thing I have done was to translate documents.

384 when requested.

Q. For whom?

A. For the committee.

Q. In that case the United States Government filed the petition?

A. I believe so.

Q. You say that these owners of grants issued by the State of Sonora applied to the Federal Government for their confirmation of those titles that were made void by the Santa Anna decree?

A. No, sir; I did not mean to say that, and I misunderstood Mr. Reynolds, if that was the question; because I have not said that those had been confirmed that were void by this decree; because they have had any title, and the declaration in the decree is that they are already null under existing laws, and because they were not issued by the proper authorities.

Q. You are employed, you say, by American companies who have acquired their tracts in the State of Sonora?

A. Yes, sir.

Q. You are connected with an irrigating enterprise down there?

A. The company had a concession for these lands, and I hold a general power of attorney from them to do work in Mexico, but am not connected

with the survey of the canal; the work on the American side I have nothing to do with whatever.

Q. Are you connected with companies and employed by parties interested in building a ditch that would, in order to irrigate their lands, have to go over portions of the land in controversy?

385 A. As I understand it, no, sir; can irrigate the land that way, but, as I have said before, I have nothing to do with the line work on this side of the line; my work is all in Mexico.

Q. The land on the Mexican side, is it of any value without a ditch on the same?

A. On this land water has been used and obtained over this land on the American side, and it can be obtained from the American side just as well.

Q. Were you not trying to obtain it on the Mexican side?

A. By the way the river runs it is more convenient to do it on the American side.

Q. Did you not run a line for that ditch?

A. I have never run one; no, sir.

Q. You are the representative of that company in the State of Sonora?

A. Yes, sir.

Q. You have charge of this company's—

A. I don't cross over into this country.

Q. It is the same company on the Mexican side as on the American side, that you are connected with?

A. Yes, sir.

Witness excused.

EUSEBIO CHACON, official translator, court of private land claims, testified as follows:

By Mr. REYNOLDS, U. S. attorney:

386 Q. I will get you to state what those books are you hold in your hand?

A. These books, from what I am able to get from the title of them, are Mexican legislation and compilations of all the laws that have ever been passed by the authority of Mexico.

Q. Do they purport to be issued by authority?

A. Yes, sir.

Q. Have you gone over those books, commencing with 1814 and down to 1839?

A. I have gone over a part of the laws that were passed the year 1814, and then I have gone over the laws that were passed from 1835 to 1838 very carefully—the principal acts and proceedings, and circulars, decrees, and regulations bearing upon the disposition of the public property.

Q. I wish you would take volume one and read the title.

A. "Mexican legislation, or complete collection of the legislative dispositions issued since the independence of the Republic. Compiled by Manuel Dublan and Jose Maria Lozano. Official edition."

Mr. REYNOLDS. I will offer certain portions of these books, the first of which will be in book one, article one, 1814, that is the date; on page 433 is the constitutional decree for the freedom of Mexico, signed at Arispe on the 22nd of October, 1814—

Q. Is that the beginning of the declaration of independence?

A. I would call it that.

Q. It is the basis upon which the Mexican nation was to form its declaration against Spanish monarchy?

387 A. It is in the preamble; it states it is the basis upon which they will form their independence—article first, chapter first.

Witness excused.

And defendant rests its case in chief.

The plaintiff reopened his case.

Mr. STEVENSON. I offer in evidence the report of R. C. Hopkins, as special agent of the Government of the United States, relative to the grant in controversy, made to the Commissioner of the General Land Office at Washington, and recorded at pages 176, 201 to 251, one *one* of the record books in the office o' the surveyor-general of the Territory of Arizona, which record book is upon its title-page endorsed by the surveyor-general of Arizona, as follows: "Duplicate report of the special agent, R. C. Hopkins, esquire, under instructions of date March 4, 1879, beginning at page 172 to 285. After the notes of explanation it is signed "John Wasson, United States surveyor-general for Arizona."

We ask to have the stenographer copy on the record such portions of the book as are marked.

388 Attorneys withdrew the last request, and stated that they would have copied the portions of said report so marked and introduced and file the same as an exhibit. (Petitioner's Exhibit X.)

#### EXHIBIT X.

Which said exhibit is in the words and figures following, to wit:

Report off R. C. Hopkins of an examination of the archives of the State of Sonora, Mexico, for the purpose of obtaining data in relation to grants of land made by the Government of Spain and Mexico within the territory ceded to the United States by the Gadsden treaty of 1853; which said examination was made under appointment by the Hon. Secretary of the Interior, dated February 26th, 1879, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,  
*Washington, February 26, 1879.*

The COMMISSIONER GENERAL LAND OFFICE:

SIR: In compliance with your recommendation of the 24th instant Mr. R. C. Hopkins, of California, is hereby appointed to examine the Mexican archives relating to the territory ceded by the Gadsden treaty, for the purpose of detecting and preventing the consummation of fraudulent titles thereto. Mr. Hopkins will receive a salary of eighteen hundred (\$1,800) dollars per annum, to be paid from the appropriation for incidental  
389 expenses of the local land offices, and in addition his actual and necessary expenses, which will be paid from the appropriation for contingent expenses of the General Land Office.

Very respectfully,

C. SCHURZ,  
*Secretary.*

The foregoing appointment was accompanied by special instructions from the Hon. Commissioner of the General Land Office, of which the following is a copy :

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
Washington, D. C., March 4th, 1879.

R. C. HOPKINS, Esq.,  
San Francisco :

SIR: In compliance with my request and recommendation the Hon. Secretary of the Interior has appointed you to examine the Mexican archives relating to the territory ceded by the Gadsden treaty for the purpose of detecting and preventing the consummation of fraudulent titles; that a copy of the Hon. Secretary's letter is herewith enclosed duly certified.

In furtherance of the object of your appointment, your attention is called to the sixth article of the treaty between the United States and Mexico, concluded on the 30th day of Decemb'r, 1853, and proclaimed by the President of the United States on the 30th day of June, 1854, by which that part of the Territory of Arizona lying south of the Gila River, and commonly called the "Gadsden Purchase" was ceded to the United

States, which provides as follows :

390 "No grants of land within the territory ceded by the first article of this treaty, leaving date subsequent to the day, twenty-fifth of September, when the minist'r and sub-minister to this treaty on the part of the United States proposed to the Government of Mexico to 'terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected, or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

"The reasons inducing your appointment and the pu'poses sought to be attained by the discharge of the duty thereby imposed upon you, are set out in my application to the Hon. Secretary, soliciting the app'ntment as follows :

"The construction of railroads and the development of the resources of said territory with their effect upon the value of land, operate as strong incentives to unscrupulous persons to manufacture fraudulent titles and have them placed in the archives; to have the description of the boundaries in such grants as may be found in the archives changed so as to embrace a larger area than originally described, and to have grants ante-dated, so as to bring them within the terms of the treaty with a view of obtaining titles to the public lands."

As a measure of precaution, to enable the proper officers or tribunals of this Government, upon whom may devolve the adjudication of private land claims situated within said territory, dated and prevent the  
391 consummation of such frauds upon the Government, I recommend that a suitable person familiar with the language and Mexican land grants be design'ed to proceed to where the Mexican archives of ceded territory are kept and make a copy of such portions as relate to the land therein.

With these reasons and purposes declared, and having reference to the provisions of the treaty above set forth, you are designated to proceed at the

earliest day practicable to the city of Ures, the present capital of Sonora, which formerly embraced the ceded territory referred to, or wherever else in Mexico the archives relating to said territory are kept, or may be found, to make such examination thereof, and procure such transcripts and abstracts of the same, as may subserve the objects above indicated.

It is not possible for this office to prescribe the particular line or manner of proceedings which it may be proper and necessary to pursue. Your long experience in the custody and ease of the Mexican archives relating to Mexican and Spanish grants existing in California, and familiar with the various forms of title papers in use under the former governments of Mexico, will enable you to discriminate in the selection of documents to be copied so as to secure all the data that may be desirable. The proper execution of the mission is entrusted to your judgement and discretion.

I wish to direct your attention particularly to the scrutiny of dates, both of the documents found and of their recording, and filing in the archives; also of the description of premises therein, so as to detect as far as possible any changes that may be made with fraudulent intent, and that all precaution that your experience and sagacity may suggest to be taken to guard against the adoption as genuine title papers.

I suggest, in reference to transcript of documents, that they may be made in such form that translations of each, if necessary, can be appended to it, and the whole indexed for convenient reference, and that notes be made descriptive of any marked peculiarity that may appear in any of the documents copied.

You will receive as compensation for the service, as a specified in the letter of appointment, the salary of \$1,800 per annum, to be paid from the appropriation for incidental expenses of local land offices, and in addition your actual and necessary expenses, payable from the appropriation for contingent expenses of this office.

You will be furnished with a separate letter from this office with instructions as to the manner of rendering your accounts and receiving the payment of the same and your salary. You will also be furnished in a letter from the Hon. Secretary of State, accrediting you to the proper Mexican authorities.

Respectfully,  
(Signed)

J. A. WILLIAMSON,  
*Commissioner.*

To the Hon. COMMISSIONER OF THE GENERAL LAND OFFICE,  
*Washington, D. C.:*

393 SIR: In obedience to the foregoing appointment and instructions, I left San Francisco, California, on the 8th day of April, 1879, and went by the most direct route to Ures, the capital of the Mexican State of Sonora, and on reaching that place at once presented my credentials to the governor of the State, who made such orders as enabled me to have free access to the Government archives at all times during office hours.

I commenced my work by making a list of all expedientes or records of grants found in the archives from the earliest date (1661) to the date of the Gadsden treaty. This I deemed important as a guard against frauds

that might thereafter be attempted. This list I shall make an appendix to this report. From the list so made I have selected such grants as lie within the territory ceded by the Gadsden treaty, and of these I have made a careful examination, copying such portions of the record as will be necessary to determine the locations and boundaries of the tracts granted, and making such abstracts, note, and remarks as will clearly show the character of the grants, all of which will be duly set out in this report.

For the better understanding of the matters set forth in my report I think it will to preface the same with a brief outline of the laws of Spain and Mexico under which the public lands were granted and of the formalities observed in the making of said grants.

Mining and stock-raising being the principal pursuits of the Spanish colonists of Mexico these industries were encouraged and 394 protected by the Government by the passage of such laws from time to time as facilitated the stock-raising in the acquisition of lands sufficient for his use, and enabled the discoverer of a mine, by the simple process of denoucement, to acquire the exclusive right of working the same, the grantee of the land paying a small sum to the Government in consideration of the title given him, and the owner of the mine paying certain percentage of the proceeds thereof as a royalty for the exclusive right given him to work the mine he had discovered.

Under this system the applicant of land could not acquire a title for more than he required for his . . . He was compelled to satisfy the Government by reliable testimony that he needed the land for which he petitioned, and had sufficient means to stock and improve the same.

It being the policy of the Spanish Government to encourage by all means the settlement of her possessions in the New World, and the development of the natural resources thereof, the expenses attending the obtaining of titles to realings, or public lands, were made by law as light as possible. With this view was passed the royal decree of the fifteenth of October, 1754, in which it is set out:

That experience had shown that the law requiring the concession of the realing lands to be approved by the royal person of the King' as operated a great hardship upon applicants for vacant lands, since the 395 expenses incur'ed in obtaining such approvals were generally greater than the cost of the land, which much retarded the settlement of the country. It was therefore decreed that from the date of this royal resolution the viceroys and presidents of the real audiencias were authorized to appoint ministers subdelegados, whose duty it would be to take *take* the proceedings in relation to the sales and composition of vacant lands in the royal dominions of the New World, the viceroys and presidents to give punctual notice to the real secretario de estado y despacho universal de los yndeos of the ministers appointed as subdelegados in the respective districts.

This royal decree provided that the respective audiencias should grants of lands, first having submitted the same to the inspective fiscal (attorney-general), without any other expenses than the taxes affixed by law to these concessions.

Under this decree the preliminary proceedings of survey, valuation, publication and sale having been taken on the petition of the applicant



for land by the minister subdelegados of the district in which the land was situated, the expediente showing such proceedings was transmitted to the real audiencia for approval, and if approved the grant and title was issued and registered on a book of registry for that purpose.

The provinces of Sonora and Sinaloa belonged to the real audiencia of Guadalajara, and hence the grants or sales of land by the Government under this decree above referred to were registered in th' real audiencia 396 of that place up to the 4th of December, 1786, when the "real ordenanzas intendentess" were issued by the Government.

Under these "real ordenanzas intendentess" were made jueces privateros in all matters occurring in their respective provinces in relation to the sales, composition, and distribution of vacant lands, the intendentess and subdelegados to proceed in accordance with the royal institutions on the 15th of October, 1754, so far as the same was not changed by the ordenanzas.

Under the ordenanzas of the intendentess the proceedings preliminary to the grant of survey, valuation, publication, and sale were taken in the same manner as under the law of the 4th of December, 1754; but the proceedings, instead of being referred for approval to real audiencia, were submitted to the intendente (governor), who referred the same for examination to the promotor fiscal (government attorney), who made a report thereon; whereupon it was referred by the intendente to the "provincia junta de hacienda," and when approved was transmitted through the of the comandante-general to the city of Mexico for final approval by the supreme authorities of the Government; and, if found to be correct, was approved, registered in a book kept for that purpose, and the expediente returned to the province where it belonged, and where it still exists, if not abstracted or destroyed. If the proceedings as shown by the expediente were found to be irregular it was sent back to be corrected, or for explanation.

Under these ordenanzas, grants of realingo, or public lands, continued to be made, until the dominion of Mexico was lost to the 397 Crown of Spain in the revolution of 1821.

On the 4th of August, 1824, the sovereign general constitutional Congress of the United States of Mexico passed decree No. 78, in which is specified the sources of the federal revenue, and the 11th article of this recites:

"That the rents that are not included in the preceeding article of this decree belong to the states.

As a compensation for the concession of the General Government, a sum of between three and four millions of dollars was required to be paid yearly by the states for the support of the General Government. This sum was apportioned to the different states according to their population and wealth, the sum apportioned to the State of Sonora being some \$53,000.

Under this law grants of land have been made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment.

After the independence of Mexico the old intendente, embracing the provinces of Sonora and Sinaloa, was called under the new Government El Estado del Occidente, Sonora and Sinaloa continuing united *until* under that name until the year 1830, when they were divided by the boundaries, I think, as they now exist.

Between the time when grants ceased to be made within the intendencia of Sonora and Sinaloa, by authority of the Spanish Government, and the time when they were made by the authorities of the El Estado del Occidente, under the law of 1824 of the general Congress, and the provisional regulations of the congress of the State, the granting power was exercised by an officer entitled comisario general provisional de hacienda credito publico y guerra, whose headquarters, as shown by the records of the times, were generally at Fuerte, a town in Sinaloa, near the northern boundaries of the states.

About the year 1825 notes of the expedientes in the archives show that this officer issued a number of grants on proceedings which, under the Spanish Government, had not gone further than the approval of the provisional junta de hacienda, having been at that point suspended in 1821 by the revolution

In these cases no barrad or copy of grant is found in the expediente; but a note if found of the registry of the grant in Cuaderno No. 2 in the office of the comisario-general.

On the 20th of May, 1825, the constituent congress of free, independent and sovereign state of the west (Estado del Occidente) passed provisions, law No. 30, regulating the system of granting public lands. Under these provisional regulations the prices at which the public lands were to be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues unless the grantee could satisfy the Government that he required more for the use of his stock.

On the 12th of July, 1834, the congress of Sonora passed the "Ley Organica de Hacienda No. 26."

This law made no material change of the law of 1825 except in fixing value of public lands.

Grants made under these laws were conditional. They were to be occupied, and if abandoned beyond a certain time they were considered as vacant and denounceable; unless the abandonment was caused by the hostility of the neighboring savages; and the Ley Organica of 1824 provided that if the final title or grant had not been obtained by a petitioner for land, although all the preliminary proceedings had been regularly taken, the petitioner should present himself before the treasurer-general within a certain time and show good cause why he had not obtained his title; after cause, the tract claimed by him should be considered vacant and denounceable.

In granting or selling the public lands the Government of the State of Sonora continued the system that been established under the Spanish Government; the same formalities were observed; the lands were surveyed, valued, published for thirty days, and at the end of which time they were sold at public auction to the highest bidder; the treasurer-general of the State occupying the same position under the State government that the intendente did under the Spanish Government, with this difference, however: The grant given by the treasurer-general required no approval of the supreme Government.

On the 25th of November, 1853, Antonio de Lopez de Santa Ana, President of Mexico, declaring null and void all sales, cessions or any other class of alienations that may have been made of the public lands by virtue of any orders, decrees of the legislature, govern-

ment or authorities of the States and territories of the Republic without the sanction of the general powers in the form prescribed by law.

On the 7th of July, 1854, President Santa Ana issued another decree declaring that the titles of all alienations of public lands made in the territory of the Republic subsequent to the month of September, 1821, either by the general authorities or those of the extinguished States or departments, shall be submitted for revision to the Supreme Government, without which they shall be of no value.

On the 3rd of December the General Juan Alvarez, President ad inter'm of the Mexican Republic, issued a decree annulling in all the parts the decrees of the 25 of November, 1853, and of the 7th of July, 1854.

#### ARCHIVES OF LAND GRANTS,

As they at present exist in the capital of the State of Sonora, consist of twelve or fifteen hundred expedientes or records which are in the shape of old-fashioned school copy books; unfolded sheets stitched together containing from 20 to 100 pages each, dating back to the year 1661, and covering the territory now known as the Mexican States of Sonora and Sinaloa, and the southern border of the present Territory of Arizona; which Territory was under the Spanish Government first within the jurisdiction of the real audiencia of Guadalajara; consequently it formed the intendencia of the provinces of Sinaloa and Sonora; and under the Mexican  
401 Government up to 1830, it was called the "Estado del Occidente."

Under the Government the town of Arispe, situated in the northern part of Sonora, was the capital; and under the State government of Sonora, continued to be the capital until 1839, when it was removed to the town of Ures, where it remained until May, 1879, when by act of the legislature it was removed to Hermosillo.

The archives, as they at present exist, are found in a good state of preservation; much of the old writing is time faded, but it can all be read by any one familiar with the language and th' old-fashioned letter. Tradition, however, says that many of the original archives of the Government have been destroyed by the frequent revolutions which for many years have wasted that unhappy country, and these traditions would seem to be not without foundation, since the very building in which they were kept bears many marks of hostile encounters.

There are, however, no means of ascertaining what, if any, expedientes have been lost or destroyed, since they are not consecutively numbered, nor is there any corresponding book record in which an entry was kept of these exdientes of grants, except for the periods embraced between the 24th of October, 31 to the 1st of December, 1849, for which period there is found a book of registry of grants called:

Libro de Toma de Razon de los titulos de merced de terrenos expedidos por la Tedoreria General del Estado Libre y Yndependiente y Sobrano. de Sonora.

402 BOOK OF REGISTRY OF TITLES OF GRANTS ISSUED BY THE  
TREASURY DEPARTMENT OF THE FREE, INDEPENDENT, AND  
SOVEREIGN STATE OF SONORA.

The first entry if this book is made on the 4th of October, 1831; it contains 82 written pages which generally three entries on a page, the entry

being signed by the treasurer-general. The book is parchment bound; the first 68 leaves consist of stamped paper leaving a seal with legend "Estado Libre de Occidente," the margin of each leaf leaving the rubrica of Jose Ma. Mendoza, treasurer-general, containing entries to the 20th of October, 1845.

The succeeding leaves numbered from 69 to 92 enclusive, also containing entry signed by officer making grants.

This is the only book of record of grants now existing in the archives, and it is important since it covers the period during which most of the Arizona grants were made.

This is the only book of record.

The bona fide character of the book is unquestionable.

#### TESTIMONIOS OF ORIGINAL EXPEDIENTE.

The original proceedings in obtaining a grant from the Spanish or Mexican governments remained on file in the Government archives and was called the matrix (matrix). These proceedings commenced with the petition and continued through the necessary progressive stage until the time arrived for issuing the grant or patent, when from this matrix was produced what was called the testimonio which was delivered to the grantee as his title.

403 This "testimonio" was made out in the following manner:

A skeleton "borrador" or draught was made out under the direction of the "treasurer-general" or granting officer, commencing with "Whereas," and reciting the laws under which they were made; making notes directing the original proceeding to be copied in the proper places; and concluding the skeleton with a "borrador," or copy of the title or grant commencing: "Therefore, by virtue of the authority vested in him."

From this skeleton draught which remained on file with the original expediente, or matrix, the testimonio was made out by a clerk, and signed by the governor or treasurer-general, so that, in point of fact, this testimonio was the original title.

In case of the loss of this "testimonio" a new and legitimate offspring could always be produced from the original matrix, so long as the same continued to exist in the archives; and in case of the destruction of the matrix, I presume that the legitimacy of the offspring could not be attacked so long as the descent was unquestionable, but the destruction of both the parent and the offspring would necessarily end the generation.

From the foregoing history and descriptive sketch it will be easy to understand the following reports in relation to grants made by the Spanish and Mexican government of lands situated within the present Territory of Arizona, made from data found in the Government archives in the capital of the State of Sonora.

\* \* \* \* \*

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#### RANCHO PASO DE ALGODONES.

Situated at the jurisdicción of Gila and Colorado rivers, sold on the 12th of April, 1838, to Fernando Rodriguez, for the sum of \$406.00, with the following boundaries taken from the original field notes:

En vista de no tener estos terrenos ningunos colindantes por ser desiertos, muy precedi desde a la medicion correspondiente en los terminos que

siguen : Constituidos que fueror en un punto en el lado sur del Gila, rio, enfrente de la confluencia de este con el Colorado, hize poner una gran piedra un ahujon o brujula ; bien ordenada y observando del el rumbo del dar oredte casi para ir a terminar de paso del Rio Colorado nombrado " Los Algodones " se fuerno midiendo y contando tres cientos cordeles, que son tres leguas poco mas o menos por la irregularidades de andar a caballo remataron dicha medida en la preutado punto del Paso de Algodones (paso del Rio Colorado) en donde mende poner una mojonera una molo de piedras. Desde aqui siguiendo el margen do sobre dicho Rio Colorado rumbo de noroestre Norte, y Nordeste, se lleba la medida hasta el punto donde comenzo es decir hasta la primera mojonera piedra que se puso en el frenta de la confluencia del Rio Gila con el Colorado por haber pedido asi el registrador.

Fernando Rodriguez quedando medidos cinco sitios poco mas o menos.

Remarks on original title papers of rancho of Paso de Algodones :

Expedient containing 38 pages *id* found in proper place in the archives the proceedings of survey, valuation, publication, and sale are all regular, the same b'ing on corresponding stamped paper. The expediente, manifestly a genuine document concludes with the following entry, signed by the treasurer-general.

En 2 de April de 1838, se espidio por esta tesorerio-general a favor del Senor Don Fernando Rodriguez el correspondiente titulo de merced de los cinco sitios de terreno de labrantes que comprende el puesto nombrado El Paso de Algodones en el Rio Colorado y El Gila en frente de su confluencia a que contrae el expediente.

(Signed)

MILLA, *Treasurer-General.*

(Note—See " Note " on page 146.)

\* \* \* \* \*

The foregoing abstracts were made by me from the original expedientes of grants, on file in the archives of the capital of the State of Sonora, during the months of May and June, 1879. The territory covered by some of the titles examined and abstracted are partly and some, probably, entirely within the limits of the State of Sonora ; it being in some cases impossible from the descriptions of locations to tell, without survey, on which side of the line this land called for in the grants is located.

The original records from which the foregoing abstracts were made are manifestly genuine in character, showing no signs of simulations of signatures, interpolation, or changes of dates ; or anything indicative of bad faith in the execution thereof.

In addition the examination made by me of the archives existing in the present capital of the State of Sonora, I made a journey to Arispe, the ancient capital of the Intendencia under the Spanish Government  
406 and of the State of Sonora until the removal of the capital from that place to the town of Ures, in the year 1837, in order to ascertain if any papers or records in relation to land grants in Arizona still existed

in that place, but found none; in the meantime procuring from the prefect of the district of Arizpe an official certificate of which the following is a translation:

OFFICE OF THE PREFECT OF THE DISTRICT OF ARIZPE.

There do not exist in this office any original papers or records in relation to land grants in the Territory of Arizona.

Arizpe, July 21st, 1839.

(Signed)

JOSE MA. MERALES,  
*Prefect.*

Having now accomplished all that is required to be done under my instructions from the Department at Washington of the 4th of March, 1879, as it set forth in the foregoing report and accompanying abstracts and the annexed list in relation to the examination of the archives of the State of Sonora, the same is respectfully submitted.

R. C. HOPKINS,  
*Special Agent.*

Which said Exhibit X bears the following endorsements: Algodones Land Co. vs. The United States. Exhibit X. Filed in my office this 17th day of December, 1893. James H. Reeder, clerk. By I. L. Chaves, deputy.

407 Mr. STEVENSON: I now offer letter from John Wasson, surveyor-general Arizona, dated August 19, 1880, to Charles Crocker, president of the Union Pacific Railroad, San Francisco, California, of which there is a letter-press copy of this letter in letter book number one, private land claims, letters, September 1st, 1879, to March 15, 1881, being one of the letter books of the office of the surveyor-general of Arizona. (Petitioner's Exhibit Y.)

EXHIBIT Y.

Which said exhibit is in the words and figures following, to wit:

AUGUST 19, 1880.

HON. CHARLES CROCKER,

*Cor. 4th & Townsend Sts., San Francisco, Cal.:*

MY DEAR SIR: Some six months ago I advised you of the worthless and true character of the alleged private land claim at Yuma, known by the name of "El Paso de los Algodones." On the 12th instant I concluded with I am confident will prove the funeral rites of that fraud, and enclosed you will find a copy of my report accompanying the papers and testimony in the case.

Mr. Hopkins expects to leave for the city two days hence.

Very respectfully,

JOHN WASSON,  
*U. S. Surveyor-General.*

408 Mr. STEVENSON. Also offer letter from John Wasson Wasson, surveyor-general, to H. B. Underhill, of the Pacific Railway Company, dated February 28, 1880, found on page 179 of the book above referred to. (Petitioner's Exhibit Z.)



Let the record show, it is admitted that the letter book and the record book containing the report of the special agent, Hopkins, is a record book and letter book of the surveyor-general on file in the office of the surveyor-general of Arizona. 22.

EXHIBIT Z.

Which said exhibit is in the words and figures following, to wit :

FEBRUARY 28TH, 1880.

Judge W. B. UNDERHILL,  
*San Francisco, Cal. :*

D'R SIR: I am in receipt of your letter of the 24th instant and have to say in reply :

1. If there is such a tract of land as the Tres Alamos your railway lines will cross it in passing over San Pedro Valley at or near Ohnesorgen's station.

2. If there is a valid grant such as the Tres Alamos (under the proceedings of 1831 to 1833 hereafter referred to) then there is no Government land lying between the Boquillas and the said grant.

409 3. Township 17 S., R. 20 E., so far as the records of this office show, is undoubtedly public land belonging to the United States, except so far as individuals may have acquired rights or title under our own laws.

I remark on the foregoing replies as follows :

In 1831 an application was made to the authorities of Sonora by eight (8) persons for a grant of land to be called the Tres Alamos to embrace 58 square leagues. It was to cover the San Pedro Valley from the Boquillos on south to the Gila River on the north, and from the boundary of the Presidio of Tucson far enough east of the San Pedro to make up the 58 leagues.

At the instance of the applicants the Sta'e congress of Sonora passed a decree directing the treasurer-general to issue said grant, provided it were first shown by competent testimony that the applicants possessed the means to occupy the proposed grant and to maintain sufficient force to keep back the hostile Indians. The record shows that under this decree some testimony was taken, but before its completion the proceedings in the premises were suspended because of the hostility of the Indians. The last entry of the record was to the effect that the proceedings were suspended, but would be resumed upon request of the applicants for the grant. The proceedings were never resumed, nor is there any record to show that the applicants ever requested their resumption for any purpose whatever. This Tres Alamos grant was never completed, and the records of

410 Sonora show that the proceedings never at any time warranted the issuance of a grant, and also that no grant was issued upon them.

Take the record as the Sonora authorities made and left it in this case; the United States can never confirm or recognize as valid any grant based thereon, except by the grossest preversion of the Gadsden treaty and the boldest collusion of the United States officers with the claimants.

For your information I will further say in this connection, viz : I hear rumors that a claim or grant for eight square leagues will be presented

at some future time on the proceedings of 1831 to 1833 before referred to, but if done it can never be confirmed save by criminal negligence and brazen cooperation with the claimants on the part of the representatives of the United States.

The original Tres Alamos was designed to cover 50 sq. leagues and the rumored one but 8. Not this latter claim may be so located as to cover the land from the Boquilloas down the San Pedro, and therefore land at, above, and below Ohnersorgen's Station, and it can be as easily located wholly north of Ohnesorgen's and off any land your company is interested.

It is of the utmost importance that the contents of this be kept from the public. You will readily understand why. No cas' is yet presented and the information I give you is that collected by Government to protect the public from frauds. Your company can use the facts as effectively by keeping them from the public.

Very respectfully,

JOHN WASSON,  
*Sur. General.*

411 Mr. STEVENSON. I now offer copy of letter from H. B. Underhill, right-of-way agent of the Central Pacific Railroad Company, to John Wasson, surveyor-general, dated San Francisco, August 26, 1880.

H. B. Underhill, right-of-way and town-site agent.

CENTRAL PACIFIC RAILROAD,  
FOURTH AND TOWNSEND STREETS, ROOM 5,  
*San Francisco, Aug. 26th, 1880.*

JOHN WASSON, Esq.,  
*Sur. Gen'l, Arizona:*

DEAR SIR: Have this day received and read with interest your report on the Algodones grant. You deserve great credit for your careful investigation of this case, and will no doubt be fully sustained in your conclusions by the Land Department. Accept my thanks for the copy of your report. I will hand it to Mr. Crocker, who will be gratified to learn of the facts in the case and the conclusions reached.

Saw Mrs. Wasson a few days since and was struck with the evidence of improvement in her health. She seems no longer to be an invalid.

Very truly, yours,

H. B. UNDERHILL.

Plaintiff rests.

412 The defendant reopened its case.

Mr. REYNOLDS, U. S. attorney. May it please the court:

For the purpose of showing that the Mexican nation, or confederacy of the Mexican States, was not formed originally by a constitution compact between several separate independent States, nor by a grant of powers originally vested in the several provinces which afterwards constituted the States of the Union, but on the contrary that said nation originally constituted a central government and claimed and exercised central and

supreme authority over all the provinces which formed the Union of States, and which, by the constitutional provisions hereinafter cited, divided itself for political and municipal purposes into States and Territories, I offer the following articles of the constitution of October 22, 1814, which will be found in the Mexican Statutes at Large, volume 1, page 433 et. seq.

Article 1, by which the religion of the nation is established—which said article 1 is as follows:

"ARTICLE 1. The Roman Catholic and Apostolic religion shall be the one to be professed by the state."

Article 42, which names the provinces which shall comprise the nation, which said article is as follows:

"ARTICLE 42. Until a proper demarcation of this Mexico-America and of the provinces it comprises shall be made, the following, in their actual boundaries, shall be considered as comprising it, viz: Mexico, Puebla, Llaxicaca, Veracruz, Yucatan, Oaxaca, Tecpam, Michoacan, Queritaro, Guadalajara, Guanaquato, Fotosi, Zacatecas, Durango, Sonora, Coahuila, and the New Kingdom of Leon."

Article 43, which is as follows:

"ARTICLE 43. These provinces can not separate themselves one from another in their government; much less can they secede in whole or in part."

Article 242, which provides the manner of the execution and publication of the constitution or plan of government, and which is executed by the deputies of the different provinces, your attention is called particularly to that of licenciado Jose Maria Ponce de Leon, deputy for Sonora, which said article is as follows:

ARTICLE 242. This decree shall be executed in duplicate, the two originals being signed by all of the deputies present and by the secretaries; the one of which shall be turned over to the supreme Government for its publishing and execution, and the other is to remain in the archives of the secretary of Congress.

National palace of the supreme Mexican Congress at Atpanzingan, 22 of October, 1814. Fifth year of the Mexican independence.

Jose Maria Licenaga, president; deputy for Guanaquato.

Dr. Jose Sixto Berduzo, for Michoacan.

Jose Maria Morelos, " New Kingdom of Leon.

Jose Manuel de Herrera, esq., " Tecpam.

Dr. Jose Manuel Cos, " Zacatecas.

Jose Sotero de Castaneda, esq., " Durango.

Cornelio Ortiz de Zarate, " Flaxcala.

Manuel de Alderete y Soria, " Queritaro.

Antonio Jose Moctezuma, " Coahuila.

Jose Maria Ponce de Leon, esq., " Sonora.

Dr. Francisco de Argandar, " San Luis Potosi.

Secretary, Remingo de Yarza.

Secretary, Pedro Jose Bermeo.

Mr. REYNOLDS. I also offer portions of the treaty of Cordova of August 24, 1821, signed by the viceroy on the part of the Spanish Government and by Iturbide for the Mexican nation. (See Mexican Statutes at Large, vol. 1, page 548.)

414      The title and article 2, by which the Government was declared to be monarchical modified by the constitution—in other words, a limited monarchy ; which said title and article are as follows :

“Treaty of Cordoba.—Treaty signed in the town of Cordoba on the 24 of Aug., 1821, between Señores Don Juan O'Donoju and Don Augustin de Iturbide. \* \* \*

“ARTICLE 2. The Government of the Empire shall be monarchical constitutional.”

Article 12, by which the temporary powers of the Government are vested in the provisional congress ; which said article is as follows :

“ARTICLE 12. The provisional assembly once being assembled, shall govern provisionally under the existing laws in whatsoever is not repugnant to the plan of Iguala, and until the Cortes frame the constitution of the State.”

Mr. REYNOLDS. I next offer the Plan de Iguala of February 24th, 1821, published by decree of October 5th, 1821 (see Mexican Statutes at Large, vol. 1, page 547), which appears to be the plan or basis of the Government until the adoption of the constitution of 1824, in which the nation is designated as a kingdom and describes the Government as being a limited monarchy ; which said Plan de Iguala is as follows :

*Plan of Iguala, or plan of Señor Don Augustin de Iturbide.*

First. The Apostolic Roman Catholic religion without the toleration of any other.

Second. The absolute independence of this Kingdom.

Third. A monarchical government tempered by a constitution suited to the condition of the country.

Fourth. Ferdinand VII and in their turn those of his dynasty, or of some other reigning house, shall be the emperors, that we may provide ourselves with a sovereign and thus avoid the sad excesses of the ambitious.

Fifth. There shall be an assembly until the Cortes assemble and carry this plan into effect.

Sixth. Said assembly shall possess gubernative powers, and shall be composed of the members whose names have already been proposed  
415      to the Viceroy.

Seventh. It shall govern by virtue of the oath taken in the name of the King until the said King comes to Mexico, and also takes the oath, and then all further orders from it shall cease.

Eighth. If Ferdinand VII shall not decide to come to Mexico, the assembly or the legency shall govern in the name of the nation until it is decided which sovereign is to be crowned.

Ninth. This Government shall be upheld by the army of the three guaranties.

Tenth. The Cortes shall determine whether the assembly is to be continued in existence or whether a regency is to be substituted until the Emperor arrives.

Eleventh. As soon as they (the Cortes) convene they shall proceed to frame the constitution of the Empire of Mexico.

Twelfth. All the inhabitants of the said Empire are citizens with the right to postulate for any office whatever, without any other qualifications than those of their merits and virtues.

Thirteenth. They shall be respected and protected in their persons and property.

Fourteenth. The clergy both regular and secular shall remain in the exercise of all their rights and the enjoyment of their properties.

Fifteenth. All the departments of the State and the public employees shall remain as they are at this date, and only those who are opposed to this plan shall be removed, and replaced by others who shall make themselves conspicuous for their loyalty, virtues, and merits.

Sixteenth. An army for protection will be formed, to be called the army of the three guaranties, whose soldiers one and all shall perish before proving untrue to any of these guaranties.

Seventeenth. This army shall rigidly yield obedience to the military ordinance, and its chiefs and officers shall remain in the rank they now hold, having the right of preference, nevertheless, to vacant offices or to offices to be created on account of their becoming important and necessary.

Eighteenth. The troops composing it will be counted as troops of the line, and so will the other troops who embrace this plan. Those who shall not so embrace it and the citizens who enroll themselves will form the national militia, and the manner and order of all this shall be designated by the Cortes.

Nineteenth. Official positions will be bestowed on the soldiers by virtue of the reports presented by their corresponding chief officers, and provisionally in the name of the nation.

Twentieth. Until the Cortes shall assemble the proceedings in criminal matters shall be had in accordance with the Spanish constitution.

Twenty-first. In the case of conspiracy against the independence the offenders shall be reduced to imprisonment without inflicting farther penalties, until the Cortes shall dictate what the penalty shall be for this the greatest of crimes, second only to blasphemy and heresy.

Twenty-second. Persons seeking to propagate discord shall be watched over and considered in the light of conspirators against the independence.

Twenty-third. Inasmuch as the Cortes which are to be organized hereafter have to be constitutional, the deputies to them must be elected upon that understanding. The assembly is to determine the rules and the time required for them to convene.

Americans, behold here the creation and establishment of a new empire. Behold here what the army of the three guaranties, through the person who has the honor of addressing you, has sworn to uphold. Behold here the end for which your aid is sought. It asks of you nothing else but that which you yourselves should ask for and desire, namely, union, brotherhood, order, peace at home, vigilance over and abhorance of any movements whatever of a turbulent nation. These soldiers seek nothing else but the happiness of every one. Unite yourselves to them to carry to an end an enterprise which, save for the insignificant role I have played in it, I shall under all circumstances esteem an heroic one. There being no enemies for us to encounter let us hope in the God of Hosts, who is also the God of Peace, that in all who compose this combined army of

Europeans and Americans, royalists and separatists, shall be only the safeguard, the spectators of the magnificent work which I have to-day outlined and which is to be perfected and retouched by the fathers of the country. Carry dismay into the nations of enlightened Europe. Let them see that this America of the north emancipates itself without spilling a drop of blood. In the ecstasy of delight say: Long live the holy religion we profess! Long live this America of the north, independent of all nations of the earth! Long live the union which has brought happiness to us!

Iguala, 24 of February, 1821.

AUGUSTIN DE ITURBIDE.

MR. REYNOLDS. I, in this connection, offer the decree of October 5th, 1821, *supra*. Said decree is as follows:

*"Number 245.—Decree of the 5th of October, 1821.*

"To habilitate and confirm the authorities, that they may legitimately exercise their functions.

"The sovereign provisional assembly of the Government of the Mexican Empire, bearing in mind that from the moment its independence from Spain was solemnly declared, all authority necessary for the administration of justice and other public functions must emanate from the  
417 Empire itself, it has seen fit to habilitate and confirm all the officials in the offices they now hold and in accordance with the 'plan of Iguala' and 'Treaties of the town of Cordoba' to legalize all acts done by them in their official capacity."

MR. REYNOLDS. I also offer portions of the decree of June 17, 1823. (See Mexican Statutes at Large, vol. 1, p. 651.)

Article 1, which defines the constituent Congress; which said article is as follows:

"ART. 1. The sovereign constituent Congress of Mexico is the assembly of the deputies representing the nation and elected by the citizens in the manner hereinafter to be prescribed."

Article 2, which fixes the basis of representation; which said article is as follows:

"ART. 2. The basis for national representation is population, composed of the natives and inhabitants in the Mexican territory."

Article 9, which names the provinces, including that of Sonora; which said article is as follows:

"The provinces are: Upper California, Lower California, Coahuilla, Durango, Guanajuato, Guadalajara, Leon (New Kingdom of) Mexico, New Mexico, Michoacan, Oaxaca, Puebla, Queretaro, San Luis Potosi, Santander, Sinaloa, Sonora, Tabasco, Texas, Flaxcala, Vera Cruz, Yucatan, and Zacatacas."

MR. REYNOLDS. I also offer portions of the constitutive act of January 31, 1824. (See Mexican Statutes at Large, vol. 1, p. 693).

Article 1, which declares what comprises the Mexican nation; which said article is as follows:

"ART. 1. The Mexican nation is composed of provinces lying within the vice royalty that formerly was styled of New Spain and of Cap'tain-General of Yucatan, and the general commanderies of the internal provinces of the east and west."



Article 2, which is a declaration of its independence as a nation ; which said article is as follows :

"ART. 2. The Mexican nation is forever free from and independent of Spain and of all other nations whatever ; and it is not, nor can it ever be made, the property of any person or family.

418 Article 3, which declares that the sovereignty resides absolutely in the nations ; which said article is as follows :

"ART. 3. Sovereignty resides primarily and essentially in the nation ; and hence to it alone belongs the right of adopting and establishing through its representatives the form of government and other fundamental laws that it may deem proper for its preservation and happiness, modifying or changing them to suit itself."

Article 6, which provides that the *integral* parts of the nation are free, sovereign States in all that belongs to their internal government and administration, and this is the first mention of the word State and territory except in the act of January 8, '24, which is practically a contemporaneous decree ; which said article is as follows :

"ART. 6. Its *integral* parts are free, sovereign, and independent States in whatsoever belongs to their internal administration and government, and as shall be further stated in this act, and in the general constitution."

Article 8, which provides for the increase and modification of the number of states by the constitution ; which said article is as follows :

"ART. 8. In the constitution hereafter to be made the number of States composed in the foregoing article may be increased and modified according as the welfare of the people may require it."

Article 24, which requires that the constitutions of the several States must be consistent with the constitutive act and the general constitution and can not be adopted until the general constitution is adopted ; which said article is as follows :

"ART. 24. The State constitution must not be repugnant to this act, or to the provisions to be contained in the general constitution. Hence the State constitution can not be sanctioned until the publication of the general constitution."

419 Mr. REYNOLDS. I also offer portions of the constitution of 1824. (See Mexican Statutes at Large, volume 1, page 719, which was adopted October 4th, 1824.)

Article 1st, which declares ; which said article is as follows :

"ART. 1. The Mexican nation is forever free and independent of the Spanish Government and of all other powers whatsoever."

Article 2nd, which describes the territory of the nation ; which said article is as follows :

"ART. 2. Its territory comprises what was formerly styled the viceroyalty of New Spain, the capitana general of Yucatan, the general commanderies forming the internal provinces of the east and west, and also Lower and Upper California, together with their dependent lands and the adjacent islands on both seas. A constitutional law to fix out the boundaries of the federation will be made as soon as the circumstances shall permit."

Article 49, which provides as follows ; which said article is as follows :

"The laws and decrees emanating from the general Congress shall have the following for their object :

"I. To uphold the national independence and to provide for the security and preservation of the nation in its relations with foreign powers.

"II. To maintain the federal union of the States as well as the peace and public order in the internal affairs of the federation.

"III. To preserve the independence of the States among themselves in what pertains to their internal government, in accordance with the constitutive act and with this constitution.

"IV. To maintain the relative equality of the rights and duties which the States have in the eyes of the law."

Article 161, which provides that it shall be the duty of the States, among other things, to organize their governments and interior administrations, but in so doing shall not conflict with this constitution or constitutive act. \* \* \*

Also to forward annually to each of the chambers 420 of the general Congress a complete and detailed statement of the receipts and disbursements of all the treasury departments of each in their respective distracts with a statement of the origin of each ; which said article is as follows :

"ART. 161. Every one of the States has the following obligations :

"I. To organize its internal government and administration in a manner that shall not be repugnant to this constitution or to the constitutive act.

"II. To promulgate, through the medium of their governors, all their respective laws, decrees, and constitutions.

"III. To abide by and make others abide by the constitution and general laws of the union, and the treaties entered into, or to be entered into in the future, between the supreme authority of the federation and the foreign powers.

IV. To protect their inhabitants in the enjoyment of their freedom to write, print, and publish their political ideas, without the requirement of a license, revision, or previous approval for such publication, taking care at the same time that the general laws on the matter be not transgressed.

"V. To deliver at once criminals from other States unto the officer who makes demand for them.

"VI. To deliver fugitives from other States to the person who justly demands them, or to compel the said fugitives to satisfy otherwise the claims of the party interested.

"VII. To contribute to the consolidation and extinction of debts recognized by the general Congress.

"VIII. To present annually to each one of the houses of the general Congress a minute and comprehensive report on the amounts that are received and paid out at the treasuries within their limits, together with a statement of the origin of the one and of the other, and touching the condition of the different branches of the agricultural, commercial, and manufacturing industries ; likewise as to the new branches of industry that might be started and encouraged, together with a statement of the means by which that object can be accomplished ; likewise as to their population and the measures to be employed for protecting and augmenting it.

"IX. To present to both houses of Congress, and during their adjournment to the council of the Government, and also to the supreme executive power, an official copy of their constitution, laws, and decrees."

Mr. REYNOLDS. Also article 171, which provides that the constitution shall never be amended in certain particulars therein specified, one of which is the form of government; which said article is as follows :

"ART. 171. The articles of this constitution and of the constitutive act that fix the liberty and independence of the Mexican nation, its religion, form of government, freedom of the press, and the distinction drawn between the supreme powers of the union and those of the States, shall never be amended.

"Done in Mexico the 4th day of October, 1824, fourth year of the Mexican independence, third of its liberty, and second of the union."

Mr. REYNOLDS. I offer page 361 of the Mexican Statutes at Large, volume 2; which said page is as follows :

"Volume 2, page 361. Number 961.

"July 7, 1831, circular of the secretary of finance. Provisional regulation for the general directory of the revenues.

"ART. 10. The general directory shall take a minutes account of the quantity, locality, price, condition, and actual management of all the national properties and estates, including those of temporalities and of the inquisition as well as of all other properties belonging to the public finances, as provided in the said law of the 4 of August, 1824. It shall endeavor to make them yield the highest possible incomes, conforming to the law of the 26 of January last and to all other existing laws bearing upon the matter. It shall aim likewise at the greatest regularity as well as at the highest yield of the incoming profits, together with the corresponding diminutions in the expenditures. And it shall do whatever else may be deemed profitable in sales, leases, or other manner of disposing of the properties spoken of."

Mr. REYNOLDS. I now offer portions of the regulations of July 20, 1831, governing the treasury department of the nation, made by authority of the law of May 21st, 1831, for the purpose of showing that the "Junta de Almonedas" is a federal body composed solely of federal officers, with authority to sell no lands except such as are national lands, and with no authority to sell lands owned by the State of Sonora :

Section 73, which provides that the commissary shall receive the proceeds of the revenues which are under the administration of the General Government; which said section is as follows :

"ART. 73. The commissariats-generals, within their respective demarcations, shall collect all the net products of revenue under the care of the general directory, and they shall be the proper custodians of funds that stand unappropriated for any purpose. It is their duty likewise to collect all other revenues from all sources else; for which purpose authority is given them to incur whatever expenses may be necessary; said collections they shall distribute into the several funds of the Union according to their uses. They shall also supervise the balancing of the cash books in the Government offices and general depots, whenever the balancing shall have to be done. They shall be the proper supervisors and guardians of the treasury depots; and it is their duty to watch that all employees in

the same do their duty faithfully and well. In the matter of bridges, canals, and common roads, they shal' exercise such authority as is given, or that shall be in future given to them by law. Finally it devolved upon them to do whatever else is entrusted to them by the Government, relative to the finances of the nation; likewise as to matters entrusted to them by the general directory relative to its collecting offices, and they shall perform all other duties that may be assigned to them by law."

Section 126, which provides for the organization of the boards of public sale "Junta de Almonedas;" which said section is as follows:

"ART. 126. All sales, purchases, and contracts done for the benefit of the public finance department, wh'ever their object may be, shall be entered into by the commissaries-general at auction sales meetings (Junta de Almoneda). But in order to have such meetings called it is necessary that they should have previously received the proper order therefor given either by the Supreme Government and directly communicated to them, or indirectly through the treasurer-general or from the directory of the revenues, whenever the order has reference to matters of its own supervision."

Section 127, which provides for the place and manner of holding meetings and who shall be present and have a vote.

Mr. REYNOLDS. At this point, I will call your attention, the 423 department has only jurisdiction to sell lands of the nation, and not lands of the States, and by section 73 the commissary-general is given authority to receive the revenue which are under the administration of the general department, and the act of July 20th, 1831, so far as it applies to sales of lands, is confined to the sale of those lands under the jurisdiction of the general department; which said section 127 is as follows:

"ART. 127. Said meetings shall be held in the apartments of of the commissariats to be suited to the purpose or at the public place more immediately adjoining said offices; and the commissary or subcommissary who presides at them shall be a regular member thereof, as well as the oldest auditor of the treasury or his deputy, and also the public procurator wherever such may be; each one of these officers shall take their seats in the order in which they are named."

Article 128, which provides that certain officers of departments shall be casual members when matters connected with their departments are to be considered; which said article is as follows:

"ART. 128. Besides these regular members, there shall also be special members, as the nature of the sale, purchase, or contract may be; for whenever in the federal district officers of said revenue for the general directory are the subject for consideration, then the auditor in charge of said office or revenue shall attend the meeting in the character of a special member; said offices or revenues belonging to any other department, then the chief clerk of the section of accounts of finances shall attend. In army matters, an officer appointed by the proper inspector shall attend, and in matters concerning shops and buildings under the contract of the artillery department, their chief officer shall attend. In matters of hospitals, one of the first adjutants of the medical board; and in matters of fortifications and officers of the board of engineers. Lastly, upon matters having reference to any other thing than these mentioned, the employee better acquainted with such matters, and who shall be appointed by the commis-

sary-general shall attend. He (the commissary-general) taking care to give notice to both the regular and special members of the day and hour  
 424 for the auction to take place, which will be ordinarily at ten o'clock in the morning. When the military officers or the auditor of the general directory and the chief clerk *clerk* of the section of accounts of finance shall be present in the character of special members, they shall take their seats after the commissary-general."

Article 130, which provides that a notary public shall attend if there be one in the place, which said article is as follows :

"ART. 130. If there happens to be a notary at the place, he shall be in attendance of said auction-sale meeting without fail, and with him, or if there should be no notary, then with two attending witnesses. All matters transacted at the meeting shall be certified to."

Article 131, which requires notice of sale and prescribes the manner in which it shall be given, which said article is as follows :

"ART. 131. But in order to hold such meetings it is necessary that the sales or purchases to be made must be announced to the public, at least eight days before, by means of placards to be posted at prominent and conspicuous places, having their contents published also in newspapers having the largest circulation, if there be any such papers in the place, the commissaries being careful that in said notices both the more essential circumstances and the necessary instructions pertaining to the matter be inserted."

Article 132, which prescribes the manner in which the sale shall be conducted, which said article is as follows :

"ART. 132. Once that the meeting shall be opened and the corresponding proclamations made by the public crier, bids legally made shall be admitted until the closing day of the sale, when it shall be declared in favor of the highest bidder by a majority of the meeting. This act, together with whatever else took place at the auction sale, will be placed on record in a book kept by the commissaries or subcommissaries for that purpose, all the members signing therein, together with the attending witnesses, or with a notary, who (the notary) shall moreover write the other deeds connected with the transaction. In case there be no notary in the place, then a clerk, brought for the purpose by the commissary-  
 425 general, shall reduce to record the act and decision of the meeting."

Article 133, which is as follows :

"ART. 133. When the term prescribed by law expires the commissaries or subcommissaries shall send the expediente, together with an accompanying report, to the Supreme Government, without whose approval the sale, purchase, or contract can not be carried into effect."

Article 134, which prohibits any member of the board being interested in the sale, under penalty therein prescribed, which said article is as follows :

"ART. 134. When it appears that any one of the members of the auction meeting, by himself or through another person, bought or sold at the auction sale for his own use, then the sale shall be null, and he shall be punished by the infliction of such penalties as the law imposes on like transgressors."

Mr. REYNOLDS. I also offer in evidence a portion of the decree of October 3rd, 1835. (See Mexican Statutes at Large, vol. 3, p. 75.)

Article 2, by which the state legislatures are abolished, which said article is as follows :

"2. The legislatures shall cease at once in the exercise of their legislative powers; but before dissolving (and legislatures that are in vacation shall convene for that sole purpose) they shall appoint a departmental assembly, to be composed for the present, of five individuals, chosen either among the members of the legislature or from outsiders in order that they may act, serving as a body of counsellors to the governor. In case the office of governor is vacant they shall propose three names to the General Government of persons having the qualifications heretofore required for that official employment. And until such governor is appointed his place shall be filled by the person answering to the first of the names presented to the Supreme Government."

426 Article 5, which said article is as follows :

"5. Likewise shall the other officers of an inferior rank remain in their present state employments, if their offices have not been disposed of otherwise. But they themselves and their offices, and the revenues and affairs under their management, shall be subject to and under the control of the Supreme Government of the nation, through their proper governors.

"And in order that the foregoing law may have full force in the administration of the revenues of the several states, his excellency, the Acting President, has issued the following regulation :"

Article 13, by which the governors are prohibited to sell any property without consent of the Supreme Government previously given until powers are given them by law, which article is as follows :

"ART. 13. (Of the regulations, same number.) Until the powers of the governors and departmental assemblies on matters of finance shall be declared by law, the governors shall not make any conveyance or estates or incur into unusual expenses in said matters of finance without the previous approval of the Supreme Government."

Article 15, which provides for the disposition of documents and archives in the hands of the several governments, which article is as follows :

"ART. 15. The Supreme General Government, through the agency of the secretary of finance, shall give the proper course to all documents, letters of consultation and expedientes that have been addressed to him by the governors. This he shall perform by sending the first of these matters to the general directory of revenues, or to the treasury-general, according to the class they belong to, and to their intended uses. As to the second, he shall make from the offices themselves such inquiries as will enable matters to be expedited and determined."

Article 16, by which the officers are required to furnish information and make suggestions with reference to such documents and archives for the service of the Supreme Government in its action, which said article is as follows :

"ART. 16. The general directory of revenues, and the treasury-  
427 general, through the agency of the minister of finance, shall make to the Supreme Government such observations as they consider proper to be made on documents received by them; and they may suggest appropriate matters, for the Government to dictate accordingly its necessary decrees to the several governors."



Mr. REYNOLDS. I also offer in evidence the resolution of the council of the government of June 23rd, 1835 (see Mexican Statutes at Large, vol. 3, p. 58), calling the special session of Congress for the purpose among other things of changing the form of government and adopting a new constitution, which said resolution is as follows :

"Number 1595. June 23, 1835. Resolution of the government council. A call for an extraordinary session of Congress.

"The council of government, in the exercise of the powers given to it by article 116, of the federal constitution, resolves :

"1. That the general Congress shall be called to an extraordinary session.

"2. That it shall hold a preparatory meeting on the 16th of July next, and that its session shall be opened on the 19th of the same month.

"3. That the following matters shall be submitted and acted upon at such extraordinary session :

"I. The general tendencies of the people towards a change in the actual form of government.

"II. The acts to be done by the executive regarding the various government departments, as being urgently necessary, but which acts must be so declared to be by Congress in its extraordinary session.

"III. The administrative powers of both houses of Congress."

Mr. REYNOLDS. I offer in evidence the plan or basis for a new constitution of October 23rd, 1833 (see Mexican Statutes at Large, vol. 3, p. 89), as follows :

Article 1, which declares the national independence and establishes the national religion, which said article is as follows :

"ART. 1. The Mexican nation, one, sovereign, and independent until now, does not profess or protect any other than the Catholic Roman and Apostolic religion, nor will it tolerate the exercise of any other."

Article 8, which divides the nation into departments, which said article is as follows :

"ART. 8. The national territory will be divided into departments upon the basis of population, locality, and like circumstances. Their number, extent, and subdivisions will be fixed by constitutional law."

Article 10, which vests in executive power of the departments in the respective governor, subject to the chief executive of the nation. Legislative authority is vested in the departmental assemblies, subordinate, however, to the general Congress of the nation, which said article is as follows :

"ART. 10. The executive power of the departments shall be lodged in the governors, subject to the control of the supreme executive of the nation. The departmental assemblies shall be the counsellors of the governors. They shall be empowered to promote and do whatever may be deemed conducive to the welfare and prosperity of the departments, and they shall have administrative, municipal as well as electoral, and legislative powers, which shall be specified by law ; but in the exercise of powers of the last character they will be controlled by the general Congress of the nation."

Article 14. The treasury and other departments are to be systematized by law, which said article is as follows :

"ART. 14. A law shall be passed to systematize the finances of the nation in all their branches. It shall organize the system of records and

accounts and create the court of revision, as well as regulate the administrative and the contentious jurisdiction of this branch of the Government."

429 Mr. REYNOLDS. I offer in evidence the circular of the secretary of the treasury of December 7, 1835 (see Mexican Statutes at Large, vol. 3, page 108), in which the secretary of the treasury refers to and recognizes the centralization of the revenues, which said circular is as follows:

"December 7, 1835. Circular of the secretary of finance to the effect that only one salary shall be paid to employees, even if they hold two different offices.

"MOST EXCELLENT SIR: With this date I have said to his excellency, the governor of Zacatecas:

"MOST EXCELLENT SIR: Having delivered to his excellency, the acting president, your letter of the 27 of November last, touching the payment of two salaries to one employee holding two different offices at the same time, one under the Federal Government and the other under your department, his excellency has seen fit to declare that "if it was a fact before the centralizing of the revenues that one single employee could enjoy two different salaries at one and the same time, one of them under the federation and the other under his own State, because these were two different governments then; to-day, however, by operation of the said centralization of the revenues, it can not be permitted that one and the same Government pay out two different salaries at the same time to the same individual, there being an express prohibition in the matter. Employees of that description shall receive the salary which is the highest of the two stated afore, which by supreme order I communicate to you."

"And by order of the most excellent Acting President, I address this to your excellency that if there be any such employees in your department you may be guided by this provision."

Mr. REYNOLDS. I also offer circular issued by the secretary of finance of December 15, 1835, in which it is stated that by law of October 3rd the General Government has power to dictate the policy of the departments (see Mex. Stats., vol. 3, page 111), which said circular is as follows:

"Number 1669. December 15, 1835. Circular of the secretary of finance. Administration of the revenues and their expenditure in the departments.

"By article 5th of the law of October 3 last it is provided that State officers of an inferior rank shall remain in their actual positions, 430 if said positions have not been disposed of otherwise. But they themselves, and the offices, revenues, and matters under their charge, shall be subject to and under the controll of the Supreme Government, through the agency of their respective governors.' From the literal and express wording of this article it is clear that the Supreme General Government had once and now still has the power to dictate gubernative measures that it may deem proper for the administration of the revenues in the departments, etc."

Mr. REYNOLDS. I now offer the entire constitutio of 1836. (See Leyes Fundamentales, page' 171 to 217, including the signatures on page 217, especially that of F. G. Conde for the department of Sonora.)

(The signatures spoken of are not included in the official translation.—Clerk.)

I call particular attention to law 6, article 1, of this constitution, which divides the Republic into departments; which said said constitution is as follows :

*Number 1806.—Dec. 29, 1836.—Constitutional laws.*

In the name of the Almighty One God in three persons, who has destined all men to live in communities and does preserve them ; the representatives of Mexican nation, chosen by it to organize the form of government most conducive to its happiness, to that end, in congress assembled, decree the following constitutional laws :

*FIRST LAW.—Rights and duties of Mexicans, etc.*

ART. 1. Mexicans are : I. All persons born in the Republic from a father who is a Mexican by birth or nat'ralization. II. All persons born of a native Mexican family in a foreign country, provided that on becoming of age they already have settled in the Republic, or have given notice of their intention to do so, and they do so settle within one year subsequent to the giving of said notice. III. All persons born in a foreign country from a father who is a Mexican by nat'ralization ; but said father must still retain his Mexican nationality, and the son must perform the conditions mentioned in the foregoing paragraph. IV. All persons born in the Republic from a father who is a foreigner ; but they must have remained in the Republic until becoming of lawful age, and the father must have given due notice when coming into the Republic. 431 V. Those persons not born in the Republic, but who at the time of the achievement of its independence were in it, swore allegiance thereto and continued to reside within its territory since. VI. All foreigners who, having come into the republic lawfully, have obtained naturalization papers under the conditions provided by law.

ART. 2. The right of the Mexicans are : I. Not to be imprisoned except under the written and an' authorized order of imprisonment from the competent justice ; nor to be arrested except by the authorities who are empowered by law to do so. Criminals caught in the act are, however, made an exception ; as then anyone may apprehend the transgressor and deliver him to the proper justice or officer. II. Not to be detained longer than three days by any political public authority and to be turned over in that period into the charge of the judiciary ; not to be detained by these any longer than ten days without the proper legal order of arrest. All the said authorities shall be called to account for any abuse they may commit in the matter. III. Not to be deprived of property, nor of its use and enjoyment. Whenever public necessity shall require the taking of said property, he can only be deprived thereof, when in the capital, by the President and his four ministers, and in the departments by the governors thereof and the departmental assemblies, who shall declare the said taking to be a public necessity. The owner, be it a lay or ecclesiastic corporation or a private individual, shall be indemnified beforehand on an appraisalment to be made by two experienced men, one of whom shall be appointed by the party in interest himself. In case these appraisers cannot come to

an agreement, a third one shall be added as provided by law. The said compensation can be demanded in the capital before the supreme court, and in the departments before the proper superior tribunal. This demand will suspend executions of the sale until the entering of the decree in court. IV. Not to be tried or sentenced by commissions or tribunals other than those created by the constitution, nor under any other laws but those enacted prior to the commission of the act. V. Not to have his house and papers searched except in the cases and with the restrictions literally provided by law. VI. To be free to transport himself and his goods into a foreign country whenever he chooses to do so, provided there are no liabilities on his part to detain him in the country, and provided he pays the lawful duties on the exportation of said goods. VII. To be free to print and circulate, with a special prior authorization, of his political ideas. But abuses of this right shall be punished. Said abuses are clas'ified as misdemeanors, and until other laws shall be passed the courts can only impose on their commission such penalties as attach to the transgression of the press laws.

ART. 3. The duties of a Mexican are: I. To profess the religion of his country. Keep the constitution and the laws, and to obey the authorities. II. To cooperate in the defraying the expenses of the nation by paying such contributions fixed by law. III. To defend the country and to cooperate in maintaining and restoring public order, when they are required to do so by law and by the authorities acting under the law.

ART. 4. Mexicans shall enjoy all other civil rights and have all other civil duties to be created by law.

ART. 5. The character of Mexican' is lost: I. By being absent from the country for two years without applying in that period for the corresponding leave of absence from the Government. II. By remaining in a foreign country for two years after the expiration of the license without applying for a renewal thereof. III. By enlisting under a foreign flag. IV. By accepting honors from a foreign nation without the permission of the Mexican Government. V. By accepting offices from foreign governments. VI. For the crimes of high treason against the independence of the country, conspiracy against the life of the chief magistrate of the nation; for arson, poisoning, murder, treachery, and all other crimes to which the laws attach that penalty.

ART. 6. Persons who lose their Mexican character can obtain a rehabilitation from Congress in the cases and with the conditions required by law.

ART. 7. The citizens of the Republic of Mexico are: I. All those that have been mention in the first five paragraphs of article 1, and who enjoy a yearly rent of at least one hundred dollars from their capital, personal industry, or labor, said labor to be honest and of utility to the community. II. Those who have obtained from the general Congress letters of citizenship under the provisions of law.

ART. 8. The rights of the Mexican citizen are, besides those mentioned in article 2 and alluded to in article 4: I. To vote for all offices of direct popular election. II. To be voted for the same whenever he has the necessary qualifications.

ART. 9. The special duties of the Mexican citizens are : I. To register his name in the record of the municipality he lives in. II. To attend to all popular elections when not hindered by physical or moral impossibility. III. To perform all popular and public duties entrusted to him whenever not legally exempted or hindered otherwise by sufficient motives, which must be so declared legal or sufficient by the proper authority.

ART. 10. The special rights of the citizen are suspended : I. During his minority. II. By the condition of domestic servitude. III. For criminal cause, from the issuing of the writ for imprisonment until the rendering of a sentence of acquittal. If the acquittal is absolute the party shall be considered to have been in the enjoyment of all his rights as if there had been no order of arrest ; and no harm will accrue to him on that account. IV. For inability to read and write, counting from the year 1846.

433 ART. 11. The rights of the citizen are totally lost : I. In all cases in which the character of a Mexican is lost. II. Through conviction and imposition of a degrading punishment. III. Through fraudulent insolvency so declared. IV. For defaulting and bad management of public funds. V. For being an idler, vagabond, or not having any honest occupation. VI. By taking ecclesiastical orders, thereby becoming unfit for the exercise of the rights and duties of the citizen.

ART. 12. Foreigners lawfully coming into the country enjoy all natural rights, besides the rights stipulated in the treaties with the countries from which they come ; and they are bound to respect the religion and obey the laws of the country in matters concerning them.

ART. 13. A foreigner can not acquire real property in the Republic unless he has been naturalized, or has married to a Mexican wife and complied with all other provisions in the matter. Neither can he transport himself or his movable property to another country without going through the proper formalities and paying the amounts fixed by law. Acquisitions by colonists will be regulated by special laws on colonization.

ART. 14. The character of an inhabitant of a place is acquired by a two-years residence thereat ; and by stating during that time to the municipal authorities that the party intends to remain ; also by erecting a house, store, or entering into some useful trade.

ART. 15. Said character of inhabitant in a place is lost by moving into another locality, and by moving the house, store, or trade, and establishing the same and said other locality.

#### SECOND LAW.—*Sup. conservative power.*

ART. 1. There shall be a supreme conservative power to consist of five individuals, one of whom shall be renewed every two years. On the first, second, third, and fourth such occasions of renewals, the manner to determine which of the said five members shall go out will be by drawing lots. From the fifth time on, however, the person who has been longest in office shall vacate the same ; and members who have been subsequently coming in to replace outgoing ones, will not take part in the drawing of said lots.

ART. 2. The drawing of lots referred to in the foregoing article shall be done by the senate on the 1st day of August, immediately preceding

the said renewal of said conservative magistrates; and should the senate happened to be adjourned then the Government council will do the senate's duty in the matter.

ART. 3. The regular triennial elections, as well as special subse-

434 quent elections of these members, shall be conducted as follows: I.

A number of persons equal to the number of conservators to be elected, shall be appointed by every one of the departmental assemblies. II. Said appointments must take place on the same day in all of the departments, and only on the following dates: First, The bien'ial regular appointments shall be done on the first day of October, immediately preceding the said change of members in the said conservative body; and second, in a special election, or when it is to be for the five said members, or to fill up vacancies, then at the date to be determined by the Supreme Executive Government. III. Special elections for the filling of vacancies shall take place only when said vacancy occurred at least six months prior to the regular biennial change of officers. Should it occur later than that period, then the election has to be postponed until the regular term of the 1st of October, as stated. IV. Said elections shall have to be made by an absolute plurality of votes, and when once so made the departmental assemblies will send by the next mail the elections proceedings to the clerk of the chamber of deputies; they shall do so in a sealed letter certified by them. V. Ommission to hold said elections on the date prescribed, as well as to send the election proceedings as stated, shall create a liability on the part of the departmental assemblies to be dealt with as shall be hereafter prescribed by law. VI. On the 15th day of November, immediately preceding the biennial regular elections, and forty days prior to the holding of any special election, the chamber of deputies shall proceed to open the sealed letters and to make a full list of all the persons elected by the departmental assemblies. Then when said list shall be completed, it shall select therefrom the names of three individuals for each vacancy that it is proposed to fill. VII. On the day following the election of said three names for each vacancy, the chamber of deputies shall send the same to the senate, together with the proceedings; whereupon the Senate will on the same day select one name out of every three and make the result known to the public; and communicate the same to the Chief Executive, that it may notify duly elected members to present themselves at their new field of duty.

ART. 4. Members of this body can be reelected to the same office, and when so reelected they are at liberty to accept or decline, as they may choose.

ART. 5. In addition to these regular conservators there will be elected also three suppletory ones, who shall be residents of the capital. Their qualifications, the manner of their election, and the time for the holding of the same shall be as prescribed for regular conservators.

ART. 6. The said suppletories will officiate during the absence or inability of the regular ones, and in the order of their election. While thus officiating they shall enjoy the same emoluments and p'rogatives as the regular conservators.

435 ART. 7. They shall also fill up temporary vacancies until the regular election is held to provide for the same vacancies otherwise.



ART. 8. Election to this office shall be of greater moment than election to any other office, that of president excepted. Moreover, members-elect can not resign before or after coming into office, except on account of physical inability, the sufficiency of which has to be passed upon by Congress.

ART. 9. The said supreme conservators shall take an oath before the two houses of the legislature in Congress assembled, and the form of their oath shall be: "Do you, and each of you, swear to keep the constitution of the Republic, and compel others to keep it, by maintaining the constitutional powers in equilibrium and by guarding constitutional order, and restoring the same when disturbed, using for those ends all the powers and means that the constitution gives you?" On answering in the affirmative to this oath the clerk will use the familiar formula: "If ye do this may God reward you; if not, then may he call you to account." Should Congress happened to be adjourned, these supreme conservators may take a temporary oath among themselves; but that oath must again be repeated before Congress when it convenes next.

ART. 10. The annual salary of each one of the supreme conservators shall be six thousand dollars, and their address shall be that of excellency.

ART. 11. In order to be eligible to the supreme conservatorship the requisites are: I. To be a Mexican by birth, and in the actual enjoyment of the rights of citizenship. II. To be at least forty years of age from the day of election, and to possess a capital (physical or moral) yielding an income of not less than three thousand dollars yearly. III. To previously have held any of the following positions, namely, President or Vice-President of the Republic, senator, deputy, minister of the cabinet, or magistrate of the supreme high court of justice.

ART. 12. The powers of this supreme conservative body are: I. To declare null and void any law or decree within two months after their sanction, provided said law or decree is contrary to any express provisions of the constitution, and provided also their said declaration to that effect is requested by the supreme executive or by the high court of justice, or by a body of at least eighteen members of Congress signing to the petition. II. To declare null and void, at the request of the supreme court of justice or of Congress, any such acts of the executive as are contrary to the constitution and the laws; but said declaration shall be made within four months from the promulgation of said acts. III. To declare, likewise, null and void, at the request of one or both of the other two powers, such acts of the supreme high court of justice as are done by it in the assumption of faculties that do not belong to it. Should

436 the declaration be against the supreme high court, the conservative power will furnish the proper information to the corresponding tribunal, that it may proceed to investigate the matter judicially, and render the verdict that it arrives at in the matter. IV. To declare, at the request of Congress, when a physical or moral inability of the President of the Republic exists. V. To suspend the high court of justice at the request of one or both of the other two powers, whenever it refuses to recognize either of them, or attempts to disturb public tranquillity. VI. To suspend, as long as for two months, the sessions of Congress, and to order suppletories-elect to report for duty in place of regular Congressmen, provided the welfare of the country demands it and the supreme execu-

tive so requests. VII. To reestablish under the constitution such or all of the three supreme branches of the Government as may have been upset by revolution. VIII. To declare, at the request of the legislative branch, what is the will of the nation on matters introduced for legislative consideration, by any of the other two powers, provided the case is so extraordinary that the national will must be explicitly known. IX. To declare, at the request of the departmental assemblies, when the welfare of the nation demands, that the President of the Republic shall change the members of the cabinet. X. To grant or deny their confirmation to amendments of the constitution made by Congress; said granting or denial of confirmation to be in the manner prescribed by the constitutional law having reference to that matter. XI. To confirm the election of the senators and pass upon their qualifications. XII. To appoint every year, one the first day of January, a commission of eighteen lawyers, who hold no offices whatever, to try the magistrates of the supreme high court of justice and of the court-martial whenever said magistrates have made themselves liable to prosecution as prescribed in the constitution.

ART. 13. In order to make their acts valid and conclusive at least three conservators out of the five must concur in a decision or determination.

ART. 14. All declarations and acts of this supreme conservative power other than those described in article 12th shall be null and void; and even these described declarations and acts shall be null and void if done by the supreme conservative power of its own accord, and without being requested to do so by any of the other three powers mentioned.

ART. 15. All acts or declarations of the supreme conservative power that are based upon or conform to prior acts and declarations of theirs, must implicitly obeyed by all to whom they are addressed; and a formal disobedience of them shall be high treason.

ART. 16. These supreme conservators can not, during the period of their incumbency, nor for two years after, be elected to the presidency, nor obtain offices or commissions, nor petition the Government for any kind of grants for themselves or for others. Neither can they be elected to the chamber of deputies within the limitation stated in article 42 of law *law* of 437 30th of November last.

ART. 17. This supreme conservative power is amenable for its acts only to God and to public opinion; and its members shall at all times be privileged in their opinions.

ART. 18. If any of the members of said body happen to commit a crime he shall be accused before Congress, the two houses thereof being united for that purpose; and Congress, by an absolute plurality of votes, shall declare whether or not a true cause lies. Should it decide in the affirmative the accused shall be dealt with by due process of law before the supreme court of justice. This supreme court, moreover, shall also be the proper tribunal for all civil actions in which any of said conservative members are defendants.

ART. 19. This supreme conservative power shall ordinarily reside in the capital; but if the public safety or their own safety require it otherwise, then it may transport itself to any other locality in the Republic for any limited period of time.

ART. 20. On the first day of each biennial constitutional term, the supreme conservative power shall elect a President and a secretary from

its own members, and these officers may a second time be reelected as the conservative power may desire.

ART. 21. All correspondence from any of the other powers of the Government with this supreme conservative body shall be addressed to the secretary.

ART. 22. All votings and deliberations of this body shall be private and the votings shall be by casting white and black ballots in the ballot-box.

ART. 23. Although rooms shall be set apart for this conservative body in the national palace, still it shall have no fixed time or place of meeting, and the President thereof shall call said meetings when necessary by means of private letters to his several colleagues stating therein all circumstances he may deem proper in the case.

THIRD LAW.—*The legislative department, its members, and the making of laws.*

ART. 1. The supreme legislative power of the Government is vested in the general Congress, composed of two houses.

CHAMBER OF DEPUTIES.

ART. 2. The bases for the election of deputies to the lower house shall be population. There shall be elected one deputy for every one hundred and fifty thousand people, as also for every fraction of that number that reached up to eighty thousand people. Departments, however, which do not come up to that number of inhabitants shall be entitled to representation by one deputy. A number of suppletory equal to the number of proprietary deputies shall also be elected for emergencies.

438 ART. 3. One half of the members of each one of the houses shall be renewed every two years. The departments of the Government will also be divided into two sets approximately equal in population, and the first two years one of these sets will elect its deputies. The next two years another one will do so, and so on alternately.

ART. 4. In all the departments the election of deputies shall take place on the 1st Sunday in October of the year immediately preceeding their term of office; and said deputies elect shall enter upon the discharge of their duties in January of the following year. There shall be a special law to fix the time, manner, and form of said elections, as also the qualifications and number of the electors.

ART. 5. The elections of the deputies shall be confirmed by the senate; it shall also pass upon the qualifications of the deputies elect; but in so doing it shall confine itself to investigate whether or not they possess the necessary qualifications, or whether or not there was any defect connected with the electoral assemblies that would necess'arily vitiate the election, in the case of a defect in the electoral assembly, that will be ordered to be corrected; in case of defect in the party or parties elected, a new election shall have to be held again. Again, in case the proprietary deputy elect should be found to lack the constitutional qualifications, then the suppletory one shall be called in his place; moreover, whenever the proprietaries, through some reason or other, can not be present, the suppletories shall act in their stead.

ART. 6. To be a deputy the requisites are : I. To be a Mexican by birth, or a native of any section of America that in 1810 was subject to Spain, and is now independent, provided said natives resided in the Republic at the time of the achievement of its liberty. II. To be a Mexican citizen in the actual enjoyment of his rights ; and to be a native or inhabitant of the department from which he is elected. III. To be at least thirty years of age on the day of election. IV. To possess a capital (material or moral) that yields him an income of at least one thousand dollars yearly.

ART. 7. The following persons *can* not be deputies, namely, the President of the Republic and the members of the supreme conservative power during their office as such, and one year afterwards ; the magistrates of the supreme high court of justice, and of the court martial ; ministers of the cabinet and clerks of their offices ; the employees of all offices under the ministry of finance ; the governors of departments during their office as such, and six months after ; the very reverend archbishops and bishops, mitred personages, ecclesiastical provisors, and vicars general ; judges, commissioners, and commanders general ; these latter minor individuals can not be so elected deputies for the departments in which lies their particular charge or office.

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## SENATE.

ART. 8. The senate shall be composed of twenty-four senators, elected in the following manner : The Government, in a meeting of the cabinet, the chamber of deputies, and the supreme court of justice, shall each one, by an absolute plurality of votes, elect a number of persons equal to the number of senators to be elected. The three lists thus formed shall be certified to by the proper clerks of each one of these bodies, and then sent to the departmental assemblies. The said departmental assemblies shall then proceed, each one, to select from those lists, a list of individuals equal in number to the number of senators to be elected, *m*which names shall be sent to the supreme conservative power, who shall examine the said lists and determine the election according to what is provided in article 5th of this law, and then declare as senators those who happen to receive the majority of the suffrages of the departmental assemblies, and in the order of their majorities. Whenever a tie occurs lots shall be drawn to determine who shall be senator.

ART. 9. Every two years one-third of the senate will be renewed in the following manner : At the end of the first two years eight senators last in the list of majorities shall vacate the office ; at the end of the second year the eight senators second to the first eight in the list of majorities shall vacate ; and lastly, at the end of the third biennial term, the remaining eight senators of that list shall vacate.

ART. 10. This election of senators described in the eighth article of this law shall take place on the 3rd day of July of the year immediately preceeding the said ch'nge of senators, and the departmental assemblies shall have their said elections for senators on the 15th day of August of the same year, and the declaration and confirmation of the same shall be made by the supr'me conservative power on the first day of October of the same year ; whereupon the chief executive will then notify each senator of his election.

ART. 11. Vacancies occurring in the senatorial office shall be filled by the holding of a special election in the manner stated in article 8th, mentioned, and the senator so elected shall proceed to fill the vacant senatorial seat, but his term of office will last only as long as the term of the one he represents.

ART. 12. The qualifications for the senatorships are: I. To be a citizen in the actual enjoyment of his rights. II. To be a Mexican by birth. III. To be at least thirty-five years of age on the day of the election. IV. To possess a capital (material or moral) that yields an income of at least twenty-five hundred dollars yearly.

ART. 13. The following persons can not be senators: The President of the Republic during his office as such, and one year after; the members of the supreme conservative power; magistrates of the supreme high  
440 court of justice and of the court martial; ministers of the cabinet and the clerks of their offices; the general officers of finance; and the governors of the departments during their office as such, and six months after.

#### THE LEGISLATIVE SESSIONS.

ART. 14. The sessions of the general Congress will commence on the first day of January and on the first day of July of each year. The session of the first part of the year may be adjourned on the 31st of March; the session of the latter part on any day after Congress has terminated the business to which it exclusively lends its attention during said session. This term exclusive has reference to the examination and approval of the fund fixed for the cost of the Government for the coming year, and the accounts rendered by the ministers of finance for the year next preceeding the last.

ART. 15. Congress shall hold session every day of the term, except church festivals and civil holidays, which are to be so declared by a secondary law.

ART. 16. The regulations for Congress shall prescribe the hour for the opening of the sessions, and how long the same shall last; it shall also prescribe the length of time for which each one of the houses shall take a recess, together with the manner thereof and all other preliminaries relating to the sessions as well as to the deliberations and votings of Congress.

ART. 17. In order to submit any law or decree to the vote of Congress it is first necessary that at least one-half of the congressmen of each house shall be present, and all matters submitted to a vote have to be determined by a majority of the quorum present as stated, excepting those cases where the laws shall require a larger number than one-half the congressmen of each house to constitute a quorum.

ART. 18. When it is sought to adjourn Congress a formal decree to that effect shall be passed by both houses and then sanctioned and promulgated by the chief executive.

ART. 19. Should Congress determine not to adjourn on the 31st of March during its session of the fore part of the year, or should the President by notice of the council request a prolongation thereof, then a decree to that effect shall be passed and promulgated. But said decree must specify the matters with which Congress shall deal during the said pro-

longation of its regular session ; but it will not state the time that it shall last, as it shall take such time for its deliberations as is necessary and it can dispose of during the months of April, May, and June.

ART. 20. The President, with the advice of the council, may, during the vacation of Congress, require the permanent deputation to call it to extraordinary sessions. He may also specify the matters that Congress shall be called upon to deal with, and the same shall confine itself to such matters and deal with no others. So may the permanent deputation  
441 call Congress to extraordinary sessions, provided the executive agrees to it, and the executive can not refuse so to agree unless with the advice of the supreme conservative power.

ART. 21. The arrangement for the taking up of matters by Congress, as stated in articles 14, 19, and 20, shall not be an obstacle to calling of other matters coming up at the time, provided they are of the utmost moment and of interest to the public, according to the opinion of the executive and of the majority of both houses. Neither will that be an obstacle for Congress to deal with such impeachments as may be brought before it, nor to give its attention to other matters of an administrative character.

ART. 22. Even if the general Congress should adjourn, the senate may still continue in session until it has gotten through with the revisions of such laws as have come before it for revision.

ART. 23. In the cases of the suspension of Congress as mentioned in article 12th, paragraph sixth, after two months stated have elapsed, the permanent deputations shall again summon Congress to resume its interrupted sessions. Congress, however, may so convene again without waiting for the said summons.

ART. 24. In the same case of the suspension spoken of in the foregoing the President likewise has the power to provide a quorum for the chamber of deputies by calling the supplementary members to sit in Congress, but they shall do so no longer than the two said months at any given time.

#### OF THE MAKING OF LAWS.

ART. 25. All laws shall originate in the chamber of deputies. To the senate belongs only the revision of said law.

ART. 26. The right to propose laws for their passage belongs : I. In all matters whatsoever, to the executive power and to the deputies themselves. II. To the supreme court of justice in matters that concern it. III. To the departmental assemblies in matters of taxation, public instruction, trades, commerce, municipal government, and constitutional amendments.

ART. 27. The supreme executive and the supreme court of justice can each, in matters relative to them, propose laws declaratory of other laws, and so can the deputies themselves, provided not less than fifteen concur in so doing.

ART. 28. In all cases where the supreme executive or the deputies propose laws which under article 26 may be so proposed also by the supreme court of justice or by the departmental assemblies, the opinion of these must be first heard before passing to the discussion of the law.

ART. 29. All laws proposed by the executive and judiciary must be submitted for discussion, so as to laws proposed by the majority of the departmental assemblies. Laws other than those may or may not be submitted,



442 accordingly as the chamber of deputies may choose, after hearing the report of a committee of nine deputies, yearly appointed, and which shall be called the committee on petitions.

ART. 30. Any private citizen whatever may also address a bill, of matters concerning himself, either to any of the deputies or to the municipal council of the capital cities. If it is to be a deputy he addresses his bill, the said deputy may, if he so choose, make that his own bill; if to any of the municipal councils, they shall determine whether or not it is beneficial that said bill should pass; and if they shall be of opinion that it is, they will send it in turn to their proper departmental assembly; but said bill will not be considered as an initiative until it has gone through all these proceedings and has received the approval of the departmental assembly.

ART. 31. When a law shall have been passed by the chamber of deputies, in all and every one of its articles, it shall be sent to the senate for revision by it, together with the record of the whole proceedings in the matter.

ART. 32. In its revision of any law or decree the senate shall have no power to make any changes or amendments, it shall confine itself to approve or disapprove, and on sending the same back to the chamber of deputies it shall accompany it by a detailed account of its own deliberations in the matter; thereby to enable the lower house to more intelligently reconsider those parts of the law that have not met with the approval of the senate and the changes or amendments that in the senate's opinion should be made.

ART. 33. If then the law or decree should pass again in the lower house by a majority of two-thirds in its original form, the senate, to whom again it shall be sent for revision, will have to disapprove it by a two-thirds majority; otherwise by that very fact it shall stand approved.

ART. 34. All laws and decrees that have passed both houses, shall be sent to the President for his sanction. But when the said law refers to amendments of the constitution, the proper body to lend that sanction is the supreme conservative power.

ART. 35. When the law has passed in both houses, and does not appear to the President to be good law, he may veto and send it back to the chamber of deputies within fifteen days from its passage, and the President shall accompany it by such remarks as by the advice of the council he deems appropriate. Should the said fifteen days elapse and the President fail to so return it, it then becomes law.

ART. 36. Bills coming under art. 33, that have gone through a second revision by Congress, may by the advice of the council be vetoed by the President, and he shall give notice of this to Congress.

ART. 37. Laws vetoed and sent back by the President shall again be submitted to a formal revision by Congress; and when two-thirds of each house concur in passing them as they stand, they shall pass over the  
443 President's veto; thereupon it devolves upon this magistrate to promulgate them as laws, but should two-thirds of both and each of the houses fail to concur in their passage, they shall be then and there dropped.

ART. 38. Laws thus rejected, or left unsanctioned, as stated in articles 33, 36, and 37, shall not be taken up again for consideration by Congress,

nor shall the matter be again referred to until one-half of the deputies have been renewed through election as provided in Article 3. As for amendments to the constitution that have been vetoed by the supreme conservative power, if, subsequent to the said renewal of the one-half of the deputies, Congress insists that they shall pass, they will indeed pass, by a majority of two-thirds of the quorum present in each house. When that is done, the sanction of the supreme conservative power no longer becomes necessary, but they shall then and there be promulgated and stand as laws.

ART. 39. When once the law is sanctioned, the President's duty is to promulgate it, in the usual manner, in the capital of the Republic, in the capitals of the departments, and in all towns and villages; in order to do so in these second-mentioned places, he shall send the same to the governors and through them to all the inferior officials, which said officials if they fail to make the said law public within three days from receipt, shall be held to account for their nonfeasance.

ART. 40. This said manner of publication shall not be requisite in the case of private statutes, but they must, however, be published in the Government newspapers.

ART. 41. The formula for the promulgation of the laws shall be: "The President of the Republic of Mexico, to its inhabitants greeting: Know ye, that the general Congress has decreed (here the law). Whereupon I command it to be printed and circulated and to be obeyed."

ART. 42. Once that a law is promulgated, it is binding from that date, unless a future date is fixed in the body thereof, making it binding from said future date. No mandatory law shall be binding until the day of its promulgation in a locality.

ART. 43. All resolutions passed by the general Congress shall have the character of laws and decrees: Laws are such as relate to matters of general and public interest; decrees are statutes that refer to specific times, places, institutions, corporations, or persons.

ART. 44. General Congress shall have the exclusive power: I. To pass all laws relating to the several branches of the Government, and to repeal, construe, and dispense with the observance of the same. II. To approve, reject, or amend the legislative acts of the departmental assembly. III. To fix by law the probable expenses of the Government for the coming year, and all contributions to be levied. The contributions so fixed shall

444 cease to be levied with that year, unless continued by express statute to the next one. IV. To yearly examine and approve the expenditures of funds belonging to the year next preceding the last; said account shall have to be rendered by the minister of finance during the last year, and commented and compared by him in the manner to be fixed by a secondary law. V. To fix the number of land and naval forces that the Republic shall have standing, and every year to assign the number of militia that shall be in service the coming year, enjoying the authority to increase or reduce it as the circumstances shall require. VI. To empower the executive to contract national debts upon the security of the national credit, and to fix what the said securities shall be. VII. To recognize the debts of the nation and to prescribe the manner and form of liquidating them. VIII. To confirm all treaties entered into between the executive and foreign powers, as well as concordats with the Apostolic Sec. IX. To declare war, approve treaties of peace, and to regulate the manner of grant-

ing letters of marque and reprisal. X. To give the Government all such instructions as are necessary for the opening of seaports, establishing costume-houses and tariffs on the goods of commerce. XI. To prescribe the weight, name, shape, and alloy of the coin, and to adopt the system of weights and measures it may deem more proper. XII. To permit or prohibit foreign armies to enter into the Mexican territory; likewise to permit or prohibit national troops to go beyond the limits of the Republic. XIII. To grant general amnesties, in the cases and manner provided by law. XIV. To create or abolish any public office; to increase or cut down the public salary attached thereto; and to prescribe general rules for the retirement from office, as well as for pension and superannuations of officials. XV. To prescribe general rules for the granting of naturalization and citizenship papers; and to confer the same by virtue of said papers. XVI. To augment or cut down the number of departments in the Republic; this to be done by segregating or dividing them or by merging them into others.

ART. 45. The prohibitions of the general Congress are: I. To pass any law or decree without the usual formalities of law and subject to the regulations for Congress. II. To banish Mexicans, nor to impose directly upon him penalties of any description whatever; the mission of the law is to prescribe in a general manner what penalties shall attach to certain crimes, and it can go no farther. III. To deprive no one, directly or indirectly, of his property, whether the owner is a private individual or a civil or ecclesiastical corporation. To the law alone belongs the right to impose contributions and taxations. IV. To pass no retroactive laws, declaratory statutes excepted. V. To deprive Mexicans of their constitutional rights, or to suspend those rights as they stand declared in these laws. VI. To arrogate to itself or to give others, by way of exercising extraordinary prerogatives, any one or all of the other powers of government, to wit, the executive and judicial.

445 ART. 46. Whatever statute shall be passed by Congress in express derogation of the foregoing article shall be ipso facto null and void.

#### POWERS OF THE TWO HOUSES OF CONGRESS AND PRIVILEGES OF MEMBERS.

ART. 47. No impeachment can be brought against the President for common misdemeanors, from the day of his election until a year after his termination of office; so also as to senators, from the day of their election until two months after the termination of their office; nor against the magistrates of the high court of justice, or the court-martial; nor against ministers of the cabinet, counsellors, and governors of the departments, except before the chamber of deputies. When the impeached shall be a deputy the impeachment, in order to be brought wit'in the prescribed limitation, shall be so brought before the senate.

ART. 48. In the stated period also, the lower house is the proper authority to decide whether or not impeachment lies for breach of duty against the following officials, to wit: The President of the Republic, ministers of the cabinet, magistrates of the supreme high court of justice and of the court-martial, the members of the council, governors of departments, and departmental assemblies. The said breaches of duty touching the three

last-mentioned bodies shall have reference to the 5th paragraph of article 3rd, second constitutional law; to the 3rd paragraph of the fourth constitutional law, and to the first three paragraphs of article 15 of the sixth constitutional law. In case the lower house *is* of the opinion that an impeachment lies, it shall appoint two of its own members to prosecute the matter in the senate. When once it acquires jurisdiction thereof, and after hearing the pleas of the complainants and of the defendants, the senate shall pass sentence according to the evidence produced. It can not inflict, however, any punishment except that of removing the accused from his office, or to temporarily or perpetually disqualify him for holding any public office whatsoever. Yet, if on the trial of the case the senate shall be of the opinion that the accused deserve a greater punishment, he shall be turned over to the ordinary tribunals, that he may be dealt with according to law.

ART. 49. In the case of ordinary crimes, when the impeachment is once presented, it is the duty of the chamber of deputies to declare whether or not a true cause lies; and if it does so decide, the accused shall be turned over to the ordinary tribunals for trial. In the case of impeachment against the President, it is necessary that the senate should concur with the chamber in finding of a true cause.

ART. 50. The said finding of a true cause, both in the case of official malfeasance and in ordinary crimes, suspends the culprit's functions and prerogatives and his rights as citizen. Other matters relating to these congressional tribunals, setting out more fully the provisions relative to the accuser and the accused, as well as the form of procedure in such cases, shall be treated in detail in the proper regulations for Congress.

446 ART. 51. Each one of the houses of Congress shall have the power without the intention of the other: I. To adopt all necessary measures as to its place of 'invening, and for the office of its secretary, as well as for all other dependent offices. Likewise as to the appointment and salary of its minor employees, and in all other matters whatsoever that have reference to its internal government. II. The correspondence between one or both houses and the Government shall be carried on by means of committee so chosen from their own numbers, and moreover, said correspondence shall be in writing.

ART. 52. Besides the powers already stated, the chamber of deputies shall have exclusive right: I. Through a committee of five, chosen from its own members, which shall be called an inspecting committee, to watch over the proper discharge of their duties by the chief auditing officials of th' general offices of finance. The manner and form in which this inspecting committee shall perform its duties will be set out by a secondary law. II. To appoint the principal and other officials and employees in the central auditing office. III. To confirm the appointments made by the government for chief officials of the general offices of finance.

ART. 53. To the senate exclusively belongs the right: I. To consent to the permit given by the President for the enforcement of decrees of ecclesiastical synods, papal bulls, and rescripts that may be of a general paramount importance to the nation. II. While the general Congress is in vacation, the senate shall have power to deal with the impeachments mentioned in article 47; also to grant or deny the permits spoken of in paragraph 12, of article 44; to which ends the senate may be summoned

to assemble by the permanent deputation. III. To confirm the appointment by the President of diplomatic envoys, consuls, colonels, and other high officers of the standing army, of the navy, and of the militia in active service.

ART. 54. The salary of the senators shall be greater than that of deputies, and they shall both be fixed afterwards by a secondary law.

ART. 55. Deputies and senators shall be privileged in the expression of their opinions during the performance of their duties, and at no time and by no power shall they ever be molested or called to account for that matter.

ART. 56. Besides the prohibitions contained in regulations for Congress, congressmen shall not: I. Resign their office without any grave and just cause which shall be so declared to be grave and just by their proper houses. II. Admit nor ask for themselves nor others, during their term of office, nor one year after, employment or commission under the Government; nor to accept or solicit any promotion to which they are not strictly entitled according to law. III. To obtain or solicit for  
447 themselves or for others within the stated limitation any pension or honors from the Government.

#### THE PERMANENT DEPUTATION.

ART. 57. The permanent deputation shall consist of four deputies and three senators, the first to be selected by the chamber of deputies and the second by the senate at the closing of the first ordinary session of the constitutional term.

ART. 58. The powers of this deputation are: I. To summon Congress to convene in extraordinary sessions whenever the president shall so declare or the deputation deems it necessary under the provisions of article 21. II. To summon Congress to reassume its legislative sessions suspended in the manner stated in article 24. III. To summon the senate to convene in the cases and for the purposes stated in article 53, paragraph 2. IV. During the vacation of the general Congress to grant or deny permission to congressmen for absenting themselves from the capital. V. To keep guard during the said vacation over the constitution in order that no violations of the same be committed.

#### FOURTH LAW.—*The supreme executive power.*

ART. 1. The executive power of the nation shall be vested in a supreme magistrate called the President of the Republic. His term of office shall last for eight years, and his election shall be held in the following manner:

ART. 2. On the 16th day of August, immediately preceeding the change of the supreme magistrate, the President, in a joint meeting of the council and his cabinet, the senate and the high court of justice, shall select three names and on the same day present the names so chosen to the chamber of deputies. This shall on the day following select three names from the nine presented to it, and then submit the said three names to all the departmental assemblies. Thereupon these assemblies will each one select that name of the three which is most agreeable to it, and this shall be done precisely on the 15th day of October of the year immediately preceeding the

change of President, and each one shall remit the same, together with a minute of the proceedings, to the secretary of the chamber of deputies. This shall be done in a sealed communication and by the next mail. Failure to perform this shall create a responsibility on the part of the departmental assemblies. On the 15th day of the month of December next, the two houses of Congress will jointly assemble and proceed to break open the sealed communications from the departmental assemblies and they shall appoint a committee of five to examine and pass upon the said election. This committee, however, has power only to pass upon the constitutional nullity or validity of the said elections, and so make a list of the votes cast by the departmental assemblies, reporting the same to Congress.

On the discussion and adoption of said report the person who shall  
448 have received the highest number of the votes of the assemblies shall be proclaimed as President. Where a tie occurs Congress shall draw lots between the two names concerned and he on whom falls the lot shall be the President.

ART. 3. The acts stated in the foregoing article shall be null and void unless precisely done on the days fixed. Only in the case of great social upheavals that hinder the reunion of Congress or of the greater portion of the departmental assemblies shall Congress have the power to change the dates thereof, and then only by a majority of two-thirds of each one of its two houses. But t'is shall take place only under straining conditions and in no other case.

ART. 4. There shall be issued a decree stating the result of this election and solemnly promulgated by the Government; the same shall be communicated to the President-elect, in order that he may present himself to take the oath and enter upon the duties of his office on the second day of the following January.

ART. 5. The retiring President can always be reelected, provided his name has been proposed in the triple list mentioned in paragraph 1, of article 2, and provided it comes up as one of the three names selected from said lists by the departmental assemblies as per paragraph 2 of the said article 2; and provided, also, that he shall obtain a vote of three-fourth' majority from the departmental assemblies.

ART. 6. The presidential office can not be renounced except in the case of a reelection, and even then only for reasonable and just motives, the sufficiency of which shall have to be passed upon by Congress.

ART. 7. If the President-elect is not in the capital Congress will appoint a day for him to be there.

ART. 8. During the temporary absence of the President of the Republic, the chairman of the council shall act in his stead. The council shall also be the proper custodian of the Government during the time intervening between the accession of the new President and the termination of office of the retiring one.

ART. 9. The term of President shall expire on the 1st day of January of the first year of the next presidential term.

ART. 10. In the case of vacancy caused by death or legal deposal of the President, another election shall be held in the manner prescribed in article 2. Congress, by a special decree, shall set the days for the holding of the said election. Should this vacancy occur during th last year of the presidential term, the said election shall be as will be stated in



the following article, and the magistrate thus elected shall act only until the next regular President shall be duly installed in office, as provided in article 2 of this law.

ART. 11. Between the time when the vacancy occurs and that when a new President, whether regular or special, who is elected, that office shall be occupied by an acting president elected in the following manner: The names of three persons duly qualified to be President shall be selected by the chamber of deputies and sent by that body to the senate; on the day following the senate shall select one from the three names submitted and the person thus chosen shall act as President. The chamber of deputies shall be informed of the result and the decree of the appointment will be submitted to the Government for sanction. Thereupon the Government shall notify the person elect to present himself for duty as acting President.

ART. 12. The President, be he regular, special, or simply an acting one, shall, before entering upon the duties of his office, take an oath before the two houses of Congress, jointly assembled, and the form of his oath shall be: "I, N——, President-elect of the Republic of Mexico, swear by Almighty God and by the Holy Gospels that I will faithfully perform the duties of my office, and that I will keep and enforce the constitutional laws of the nation." The formalities of the inauguration shall be prescribed by the regulation for Congress.

ART. 13. Whenever the President is visited by a physical or moral inability for office, the request of Congress, mentioned in article 12, paragraph 4 of the second constitutional law, must be submitted by a majority of two-thirds of the deputies present in the lower house, and approved by an absolute majority in the senate.

ART. 14. The qualifications to be President are: I. To be a Mexican by birth and in the actual enjoyment of the rights of citizenship. II. To be at least forty years on the day of election. III. To possess a capital (material or intellectual) that yields an income of at least \$4,000 yearly. IV. To have held any of the superior or military offices. V. To have never been convicted of crime or of the embezzlement of public funds. VI. To reside in the Republic at the time of his election.

ART. 15. The prerogatives of the President are the following: I. To grant or deny his sanction to the laws and decrees of Congress in all cases except those saved in the third constitutional law. II. To have all bills and decrees proposed in Congress by him acted upon by that body, provided that such matters are of those that power is given to the President to propose. III. To be privileged, except as provided in articles 47 and 48 of the third constitutional law, from being accused criminally during his term of office and for one year afterwards. IV. To be privileged from being accused for political crimes beginning from one year after the termination of his presidential office. V. Not to be arraigned for crimes until the declaration of both houses to the effect that cause lies is made, as article 49 of the third constitutional law provides. VI. To make the appointment for the cabinet, and to remove and change the ministers thereof whenever he thinks proper. VII. To appoint and send before Congress two spokesmen to urge for the Government the passage of such measures as are proposed by the Government; but only in cases where the importance of the affair make' that step necessary in the President's opinion, and in the opinion of the council.

ART. 16. Like pre'ogatives shall attach to acting presidents as supple'tory presidents elected to complete an unfinished presidential term left vacant. The pre'ogative mentioned in Paragraphs III, IV, and V, however, shall extend to them only inn the period of two months, counting from the expiration of their term.

ART. 17. The powers of the President are the following: I. To issue in according with the proper laws of the matter all such orders and decrees for the administration of public affairs and the enforcement of the constitution and laws as may be requisite, and likewise, with the council's advice, to give all such regulations as become necessary for the execution of the same. II. To propose for congressional action such decrees and acts as, with the council's advice, he may deem convenient for the better government of the nation. III. To add, with the council's advice, all such comments as he thinks proper to all the laws of Congress that have been sent to him for promulgation, provided the said laws are of those excepted in the third constitutional law. IV. To promulgate, publish, and enforce the constitution, acts, and decrees passed by Congress. V. To make the requests in the matters and in the cases stated in article 12, Paragraph I and VI, of the second constitutional law. VI. To petition Congress to adjourn its regular sessions. VII. To decide upon the convocation of Congress to extraordinary sessions by the permanent deputation, and to pre-cripe, with the advice of the council, what matters are to be treated in said extraordinary session. VIII. With the council's advice to refuse his consent to having the permanent deputation call special meetings of Congress, as it is empowered to do by article 20 of the third constitutional law, in its second subdivision. IX. To watch that all collections and expenditures of contributions are done in conformity with law. X. To appoint the counsellors as shall be stated in this law. XI. To appoint, with the advice of the council of the governors of the departments, from among those persons who' names shall be presented to him by the departmental assembly. XII. To remove diplomatic officers whenever he deems necessary. XIII. To make all appointments of diplomatic officials, consuls, colonels, and the other superior officers of the regular army, as well as of the navy and the militia in service, and the head officials of all the principal offices of finauce. In the first cases the approval of the senate is requisite; in the other that of the cahmber of deputies, as prescribed in article' 52 and 53 of the first constitutional law. XIV. To make all other appointments for military employments and for all other offices according as the laws may prescribe. XV. To intervene in the appointments of judges and their officers of the courts of justice in conformity with the spirit of the 5th constitutional law. XVI. To grant discharge papers, licenses, and pensions as shall be provided by law. XVII. To have at his disposal the land and naval forces of the nation for the defense and security of the same. XVIII. To declare war in the name of the nation, subject to the consent of Congress, and to grant letters of marque and reprisal as shall be provided by law. XIX. To enter into concordats with the apostolic see, subject to the suggestions of Congress. XX. To dictate all diplomatic correspondence, and to enter into treaties of peace, amity, and alliance, and of truce and armed neutrality, subject before ratification to the approval of Congress. XXI. To receive ministers accredited as well as all other foreign envoys. XXII. To urge the

magistrates of justice to a prompt administration of the same, and to furnish them all necessary means for the enforcement of their decisions and judicial acts. XXIII. To suspend even for the space of three months and deprive of their salary for the same period those officers of his appointment who fail or refuse to obey his orders and decrees. Should he think proper that suit must be brought up against these transgressors, he shall furnish the information required to the proper tribunal for action in the matter. XXIV. With the senate's consent to grant or refuse the permission for their enforcement in the Republic of decrees of synods, papal bulls, briefs, and rescripts, provided that the same contain provisions of general usefulness to the nation. Should they refer to contentious matters the President shall consult with the supreme court of justice; and then again, if they are purely of an administrative character, he shall seek the opinion of the council. In the case of his refusal to allow their enforcement in the Republic, he shall give notice thereof to his holiness, and the motives that prompted his action, so that his holiness may act accordingly. XXV. With a concordat once entered into between the nation and the holy see, the President shall, in the spirit of its contents and with the advice of the council, nominate for church dignities and benefices for all those bishoprics in the Republic to which the nation has the privilege of nominating. XXVI. To grant or refuse under the advice of the council and in conformity with law such pardons as are petitioned of him. This shall be done after consulting with the court that rendered the sentence and with the supreme high court of justice. Until his decision in the matter is known the execution of the sentence is suspended. XXVII. To exercise due diligence in order that no fraud may be practiced in the coinage of the money. XXVIII. To provide whatever is beneficial to the better government of the departments. XXIX. To contract debts upon the credit of the nation, but subject to the due authorization of Congress. XXX. To open up and close seaports; to establish or abolish custom-houses, and to regulate the imposts on the introduction of articles of commerce, but subject in all to the basis given to him by Congress for procedure in the matter. XXXI. To issue, with the advice of the council and in accordance with law, such naturalization papers as are sought for by foreigners. XXXII. To give passports to Mexicans who desire to go to foreign countries, and to extend to them the time for returning when the original license has expired. XXXIII. To grant or refuse to foreigners leave to come into the Republic, and to eject from it such of them as may become suspicious and are not naturalized. XXXIV. To grant trade-marks and patent rights, with the council's advice, and under such conditions as the laws shall provide.

ART. 18. The President of the Republic is prohibited: I. From commanding in person the land or naval forces of the nation without the consent of the general Congress, or, should this be in vacation, then without the consent of the senate, which shall be by a vote of two-thirds of the senators present. During his command of the army as stated his presidential functions are suspended, and he becomes subject to the control of the Government. II. From depriving any one of his liberty or inflicting on him bodily punishment. Still, whenever the welfare or security of the public requires it, he may apprehend such persons as may become suspicious, and in three days at most deliver them over to the proper court.

452 III. From taking private property except in the cases and with the formalities stated in paragraph III, article 2, of the first constitutional law. IV. From going beyond the Republic during his presidential incumbency and one year after without the permission of Congress. V. To sell, cede, or convey any town, city, village, or any other portion of the national territory. VI. To sell or convey national properties without the consent of Congress. VII. From levying on his own responsibility, either directly or indirectly, any contributions whatever, general or special. VIII. To enforce the converse of the prohibitions contained in paragraphs 4, 5, 6, and 7 of article 2, of the first constitutional law, and those of paragraph, 5, of article 45, in the third constitutional law. IX. To impede or postpone the elections established by the constitutional law. X. To impede or postpone the meetings of the conservative power or to refuse to obey its decisions.

ART. 19. All acts done by the President in derogation of any portion of the foregoing article shall be null and void, and they shall make the minister authorizing them amenable to the proper authorities.

ART. 20. The President's salary, as well as the formalities that shall be observed toward him, shall be set out in the proper secondary laws.

#### OF THE COUNCIL OF THE GOVERNMENT.

ART. 21. The council shall be composed of thirteen persons, two of whom shall be chosen from the ecclesiastical order, two from the military, and the rest from the remaining classes of society. Their election shall be as follows: This present Congress will make a list containing thirty-nine names, and when that is done it shall pass it to the President of the Republic, and he shall select the thirteen councilors out of the thirty-nine names presented. After this, whenever vacancies occur, the senate shall propose three names for every one councilor to be elected and then pass the same to the President of the Republic, who will then proceed to make the proper selections.

ART. 22. When the election of the said thirteen councilors shall be completed the President of the Republic will, on the same day, pass the list of their names to Congress in order that this body may on that day select a person therefrom to act as the chairman of the council, as well as a suppletory chairman, who shall act in the absence of the proprietary. The said selection of a chairman for the council will in the future be made by the chamber of deputies on the tenth day of January, every two years, and the same will be reported to the President for his publication thereof. The retiring chairman of the council may again be reelected to the same office as such.

ART. 23. The office of councilor is for life, and councilors can not resign except for just cause, the sufficiency of which has to be passed upon by the President of the Republic with the advice of the council itself.

ART. 24. In order to be a councilor a person must be a Mexican by birth and possess the same qualifications as are required for deputies by article sixth of the third constitutional law.

ART. 25. The powers of the council are: I. All those powers stated in this and the other constitutional laws. II. To give its opinion to the Government in all matters and occasions that it shall ask for the same. III. To appoint one of their co-councilors to act as secretary and one to

act for him in case of absence. This appointment of proprietary and suppletory secretary of the council shall be made on the tenth day of January, every two years. The retiring said secretary may again be reelected to the same office.

ART. 26. The councilors shall be liable only for such decisions that they may give in contradiction to an express law, especially in the  
453 case of constitutional laws; also for bribery and corruption in office. For liabilities of that character they can be called to account only in the manner and form prescribed by the third constitutional law.

to authorize the same by subscribing to them, if they should agree with the President's views. III. To render a detailed report every year to Congress upon the condition of all matters under them. The minister of finance shall make the said report in the month of July each year, and the rest shall make theirs in in January.

ART. 32. All of these ministers shall be liable for all omissions to comply with the laws that have reference to matters of their office, as well as for acts of the President to which they shall attach their signatures and thus authorize the same, provided the said acts are contrary to law and especially contrary to the constitutional laws. The manner of calling ministers to account for these breaches shall be only as prescribed in the third constitutional law.

ART. 33. The Government shall make the regulations relative to the ministry, and he will also pass the same to Congress, when done, for its approval.

ART. 34. A secondary law shall fix the salaries of these officers, and until that is done the old law referring to that matter will be in operation.

#### FIFTH LAW.—*Of the judiciary of Mexico.*

ART. 1. The judicial power of the Republic shall be vested in a supreme court of justice, in the superior courts of the departments, in the court of finance to be created by the proper law, and in all the courts of the first instance.

ART. 2. The supreme court of justice shall be composed of eleven judges and one public procurator (Government attorney).

ART. 3. The supreme court represents the judicial authority in whatever comes within its jurisdiction that cannot be exercised by any  
454 other body than the supreme court. Its duty is to watch over the courts of the departments in order that they may be deficient in their proper personnel and in order that justice by them may be promptly and zealously administered.

ART. 4. For election to this supreme high court the conditions are : I. To be a Mexican by birth. II. To be a citizen in the active enjoyment of his rights. III. To be at least forty years of age. IV. Not to have been legally convicted of any crime. V. To be a lawyer and to have been engaged in the practice of that profession for at least ten years. The qualifications of Mexican nationality by birth shall not be required : I. In the case of persons born accidentally in a foreign country from a father who is a Mexican by birth; provided, that the said persons have settled

in the Republic from the time they became of lawful age. II. In the case of persons who were born in any of those portions of America that up to the year 1810 were subject to Spain; provided, the said persons settled in the Republic prior to the achievement of its independence. III. In the case of natives from provinces that formed formerly a portion of the territory of the Republic; provided, that prior to the separation of said provinces the said natives settled in the Republic.

ART. 5. In the future when vacancies shall occur in this supreme court, elections to fill the same shall be held in the same manner as for the President of the Republic.

ART. 6. When the result of the election shall be known the proper decree declaratory thereof shall be issued and published by the Government, whereupon the judge elect, as well as the supreme court itself, will be given notice in order that the new incumbent may present himself to take the oath and enter upon the discharge of his duties.

ART. 7. The person thus elected shall take his oath in the presence of the chamber of deputies, and when that shall be adjourned then in the presence of the senate. Should both houses happen to be in vacation the permanent deputation shall be the proper body for that purpose. The form of the oath shall be: "Do you swear in the presence of God our Lord to keep and enforce the constitutional laws, to administer well and zealously, and to discharge scrupulously all the duties of your office? If you do this, may God reward you; if not, then may He call you to account."

ART. 9. The magistrates of this supreme court of justice can not be sued civilly or criminally in any other manner nor before any other tribunal than that created and established by the second and third constitutional laws.

ART. 8. In cases where a deputy, senator, or councilor shall be elected to the judgeship, or to the position of public procurator of this supreme court of justice, he must give preference to those offices first mentioned.

ART. 10. The President, at a meeting of the cabinet and council, the senate, and the supreme high court of justice shall, each one, on the first six days of January, every two years, make a list of nine resident citizens of the capital, who shall possess the same qualifications as are required for magistrates of the supreme court. This shall be done in order to elect nine suppletory judges thereof, whose duty shall be to act during the absence of proprietary judges.

ART. 11. The said lists thus formed will be at once passed to the chamber of deputies, who will proceed to select from the same nine persons; and those so selected by the chamber of deputies shall be the suppletory judges of the supreme high court.

ART. 12. The powers of the supreme court of justice shall be: I. To try all civil or criminal actions that shall be brought against any of the supreme conservators in the manner stated by article eighteen of the second constitutional law. II. To try all criminal actions brought against the President of the Republic, and against the deputies, senators, and ministers of the cabinet, councilors, and governors of the departments, conforming in the same to what provisions are contained in the third constitutional law. III. To try in the first instance all civil actions where the President of the Republic or the ministers of the cabinet



are defendants or plaintiffs. So, in suits of the same character, 455 where deputies, senators, or councilors are made defendants. IV. To try in the third instance all suits brought against the governors and superior judges of the departments, as well as all criminal actions brought against these same individuals for common crimes. V. To settle all disputes as to jurisdiction of matters that may arise between tribunals of different departments, or between tribunals of different creation and prerogatives. VI. To try all disputes arising upon contracts and agreements entered into by the Government or by the express order of the Government. VII. To try all matters of official liability incurred into by the judges of the superior departmental courts. VIII. To have both original and appellate jurisdiction, and jurisdiction in the last resort of all criminal matters relative to diplomatic envoys and consuls of the Republic, as also of such civil suits where these parties are made defendants. IX. To try all admiralty cases and cases of prizes captured on land and on the sea; also to try crimes committed on the high seas and injuries to the Mexican nation; and this shall be done in the manner and form to be prescribed by a law relating to that matter. X. To try all criminal actions that may be brought against subalterns of the said supreme court of justice, either for excesses or abuses committed in their official capacity. XI. To try all such recourses had to it, seeking the annulling of a sentence given in the last instance by the courts of last resort in the departments. XII. To try all such recourses had to it as seek protection against the enforcement of decrees rendered by the very reverend archbishops and bishops of the Republic. XIII. To propose laws to Congress for their passage when the same have reference to the administration of justice according to what has been provided in the third constitutional law; and more especially to propose such laws as tend to the systematizing of the courts of the nation. XIV. To give its opinion in the case of laws proposed by the Supreme Government, or by the deputies when such laws have reference to the administration of justice. XV. To pass upon all doubts occurring to other tribunals and courts, with regard to the construction of any given law; and if it should find the said doubts to be well founded, then it shall pass them to the chamber of deputies, together with its own opinion in the matter, asking of that body to give the proper explanation. XVI. To appoint all inferior officers and employés of the said supreme court. XVII. To appoint the judges and procurators of the superior courts of the departments in the following manner: The superior courts of the departments shall each one make a list of the aspirants to said offices, as well as of all others whom they consider worthy of the honor. They shall then send that list to the governor, and he, in union with the departmental assembly, shall proceed to examine and exclude from said list such persons as, in his opinion, do not deserve the public faith of the department. That done, the list will again be sent back to the superior courts, and these shall again make a list of the persons remaining; and adding to each name a detailed account of the merits and qualifications of each one, they shall pass the same to the Government. The government in turn may also, with the advice of the council, strike from the list such names as, in his opinion, do not deserve the confidence of the nation; and that done, he will send the remaining names to the supreme high court of justice, who will proceed to make therefrom the appointments for judges and public procurators. XVIII. To confirm

the appointments of proprietary judges of the first instance made by the superior courts of the departments. XIX. To favor or oppose the petitions for pardon that may be presented in favor of convicted persons. XX. To try all matters in dispute that bear upon questions of the national patronage. XXI. To deliberate upon the granting or denial of permission to the enforcement of Papal bulls, briefs, and rescripts, bearing upon matters pending in the courts. XXII. To hear and determine such petitions as come up in the capital for the appropriation of private property as stated in Paragraph III of article 2 in the first constitutional law.

ART. 13. The supreme high court of justice, by associating to 456 generals of the army, shall constitute itself into a court-martial to try all matters and cases coming up under the military law as shall be provided by a law to be passed upon the following basis: I. In the said court-martial only the military judges will pass upon criminal matters of a purely military character. II. In civil matters only the civil judges will try and decide. III. In common criminal cases and in cases of a mixed nature they will all join in the trial, as well as in trials of general commanders for transgressions committed by them in their official capacity.

ART. 14. In this court-martial there shall be seven proprietary military judges, and one public procurator, also four suppletory, said judges to fill vacancies, and one suppletory procurator. The election of all of them shall be as for judges of the supreme court, and like them they shall enjoy the prerogatives stated in article ninth. Their qualifications shall be those contained in paragraphs 1, 2, 3, and 4 of article number four of this law; and besides, they must be also generals of divisions or brigadiers-general.

ART. 15. The conditions that must attach to them in order to be eligible to any other Government offices, besides that of their incumbency, must be as prescribed in Paragraph IV of article 16 of this law; that is to say, in order to habilitate these justices of the supreme high court of justice for any commissions that the Government may entrust to them.

ART. 16. The limitations placed upon this supreme high court of justice and its officers are the following: I. It shall have no power to make regulations, even though they relate to the administration of justice, nor to dictate any measures containing general provisions that alter or are declaratory of the laws. II. They shall not have power to try national questions that are purely gubernative and economic. III. Neither shall they have power to try such matters in dispute as are pending in the courts of the departments, or that belong to the territorial jurisdiction of the same. IV. Neither the judges nor the public procurators of the supreme court can accept any Government commissions whatever. When the Government, for reasons that involve the welfare of the public, should deem it proper to appoint an officer of this court as minister of the cabinet, or diplomatic envoy, or to entrust him with any other commission of that sort, it may do so with the advice of the council and with the consent of the Senate. V. The judges and the public procurators of the supreme court can not act as attorneys at law in suits, nor can they act as appraisers, arbiters, or referees.

ART. 17. The supreme court of justice has power to make rules for its own internal government and for the exercise of its powers. It can put them in operation immediately, and send them afterwards to Congress for changes or approval.

## THE SUPERIOR COURTS OF THE DEPARTMENT.

ART. 18. There shall be capital of every department a superior court, organized as shall be set out in the proper law.

ART. 19. Every one of these tribunals shall be equal so far as their vested powers shall go, and they shall be independent of each other in the exercise of their prerogatives.

ART. 20. The qualifications for the judgeships of said courts are: I. To be a Mexican by birth, or to come under the conditions of article four, paragraph 2, of this law. II. To be a citizen with the enjoyment of his rights. III. To be at least thirty years of age. IV. Never to have been legally convicted of any crime. V. To be a lawyer, and to have been engaged in the practice of that profession at least six years.

ART. 21. The superior judges and public procurators of these courts on coming into office shall take the oath prescribed in article seven in the presence of the governor and the departmental assembly.

457 ART. 22. The powers of these tribunals are as follows: I. To try in the second and third instance all civil and criminal causes that arise in their exclusive territory, and to try in the first and second instance all civil causes to which the governors of the neighboring departments are parties, and also all civil and criminal actions for common crimes in which the superior judges of the said neighboring departments are parties. II. To try in the first and second instance all criminal actions for common crimes; also all cases of official liability and civil suits in which the inferior judges within their jurisdiction are defendants. Likewise as to all actions brought against the subordinate employees of the court, for excesses or abuses committed by them in their official capacity; also to try in the third instance like causes against subordinate employees taken to it from the neighboring departments. III. To try all recourses had to it that seek the annulling of sentences rendered by the judges of the first instance when the trial of the case was in writing and no appeal did lie; also try like recourses in the case of oral trials in which an executory judgment was rendered. IV. To settle all jurisdictional disputes that may arise between inferior judges of its territory. V. To try all recourses had to it for protection against judgments rendered by ecclesiastical judges in their territory, provided the said judges are not archbishops or bishops. VI. To determine in what cases is the opinion of the ecclesiastical authorities to be consulted clergyable criminals. VII. To qualify the lawyers who are to fill as suppletories such vacancies as may occur in said courts; and this shall be done concurrently with their respective governors and departmental assemblies in the terms prescribed in Paragraph XVII of article 12 of this law. VIII. To appoint all the judges of the first instance within their jurisdiction; but this shall be by the concurrent act of the governor and the departmental assembly. Said concurrent act shall be as prescribed in the first part of Paragraph XVII of article 12 of this law. They shall report the same at once to the supreme court for its corresponding approval of said appointments. IX. To appoint all its necessary subordinate employees and inferior officers.

ART. 23. The limitations placed on these tribunals are the following: I. They shall have no power to make any regulations, even though they should have reference to the administration of justice, nor to dictate any

measures whatever containing general provisions that alter or are declaratory of the laws. II. They shall have no authority to try in their departments matters of a purely economic or gubernative character.

ART. 24. Neither the judges nor the public procurators of these courts of the departments shall act as attorneys in lawsuits, nor as appraisers, arbiters, or referees, nor can they accept any Government commissions within the territory of their jurisdiction.

#### OF INFERIOR COURTS OF THE FIRST INSTANCE.

ART. 25. At the head towns of the districts in the departments there shall be established the proper inferior judges and courts for the transaction of all civil and criminal matters that may arise in the first instance. Likewise at the head towns of such partidos as the departmental assemblies may determine, concurrently with the governor, provided the said partidos shall have a population of at least twenty thousand people.

ART. 26. The conditions for the judgeship in the courts of the first instance are: I. To be a Mexican by birth or to fall within any of the cases stated in Paragraph II of article 4 of this law. II. To be a citizen in the enjoyment of his rights. III. Never to have been convicted by process of law of any crime. IV. To be at least twenty-six years of age. V. To be a lawyer and to have been engaged in the practice of that profession at least four years.

458 ART. 27. The judges of the first instance can not appear as attorneys in lawsuits, nor act as appraisers, arbiters, or referees.

ART. 28. They shall confine themselves to the trial of judicial matters.

ART. 29. With regard to said judicial matters, the *alcaldes* of the town shall have vested in them such power as shall be fixed by the laws.

#### GENERAL PROVISIONS TOUCHING THE ADMINISTRATION OF JUSTICE IN CIVIL AND CRIMINAL MATTERS.

ART. 30. There shall be no personal "fueros" except the military and ecclesiastical.

ART. 31. The judges and public procurators of the supreme court shall hold office for life, and they can not be suspended nor removed except as prescribed in the second and third constitutional laws.

ART. 32. Likewise shall the judges and magistrates of the first instance hold office for life, and they can not be removed except for just cause, duly proved and adjudicated in court.

ART. 34. There can be but three instances in the trial of causes, whatever the nature or the amount involved may be. A law shall fix the number of instances so to be had in the various cases according to their nature, subject-matter, and circumstances before a decree can be entered in the same.

ART. 33. The salary that these magistrates and judges shall receive will be afterwards fixed by law.

ART. 35. Those judges who have already sat in the trial of a case in one instance are barred from doing so again in another instance.

ART. 26. Bribery, corruption in office, and barratry make the judges who are guilty of the same liable in an action by any private individual or individuals.

ART. 37. In civil matters any omissions whatever to execute any of the essential pleadings in the formation of a case shall annul the whole matter and make the guilty judges personally liable. A law shall be passed fixing the pleadings that shall be considered essential in a case.

ART. 38. Like omissions in criminal actions shall make the judges that are guilty of the same liable.

ART. 39. All litigants have the option to adjust at any time all their civil and criminal actions for offenses purely personal by the medium of arbiters, whose sentence in the matter shall be executed according to the laws.

ART. 40. Prior to the institution of a suit, or civil or criminal cause, seeking to redress offenses purely personal, it is requisite that the litigants shall have sought to compromise the difficulty. These acts and proceedings shall all be regulated by the proper law, which shall also specify in what cases compromises are not permissible.

ART. 41. In the case of the written order of arrest signed by the judge, and which is mentioned in Paragraph I of article 2 in the first constitutional law, the contents thereof shall be made known to the party  
459 concerned, and he and all others are bound to obey, comply, and aid in the enforcement of the same. Any resistance offered or any contrivance to resist or impede arrest shall be a grievous offense and punishable accordingly.

ART. 42. In the case of resistance, or when the officer has reason to believe that the prisoner may escape, he may employ physical force.

ART. 43. In order to imprison anyone it shall be necessary: I. That there shall be a summary information from which it appears that an act has been done which, according to law, ought to be punished by the infliction of bodily punishment. II. That there shall be also sufficient indication or motion to believe that one certain person has committed the criminal act.

ART. 44. In order to proceed to the bare detention of a person, there must be a legal presumption or well-founded suspicion sufficiently strong to incline the judge to believe that the person in question has committed the crime. A law shall be passed punishing those judges that may choose to proceed summarily in the matter.

ART. 45. The property of a prisoner shall not be subject to attachment except for offenses that of themselves shall create pecuniary liability. And even in that case attachment shall be brought only on such property as shall be sufficient to cover the amount involved.

ART. 46. If during the trial of the case and from the evidence produced it shall appear that the prisoner is not guilty, he shall be set at liberty in the manner and form to be prescribed by law.

ART. 47. Within three days after the said imprisonment or detention, the preliminary statement of the supposed criminal shall be taken. In the course of this proceeding he shall be informed of the crime with which he is charged and of the name of his accuser if there be any. Both this preliminary statement, as well as all others that may arise in the trial of the case, the prisoner shall not be required to verify so far as they relate to himself.

ART. 48. During the arraignment and at the time of formally presenting the accusation in court, the prisoner shall be made acquainted with

the contents of all writs in the case, as well as with the witnesses and everything that shall be marshalled against him. From this time on the trial shall proceed in the presence of the prisoner.

ART. 49. Never shall torture be employed to elicit confessions in the investigation of any matter, whatever its character may be.

ART. 50. Neither shall the penalty of forfeiture of property be imposed.

ART. 51. All penalties like the offense to which they attach are the personal concomitants of the culprit and they shall not taint his family.

**SIXTH LAW.**—*Division of the territory of the Republic and internal government of its towns.*

ART. 1. The Republic shall be divided into departments according to the eighth law of the organic bases. The departments shall be divided into districts, and the districts into partidos.

ART. 2. The divisions into departments shall be made by the first constitutional Congress during the months of April, May, and June of the second year of its sessions; and it shall do so by a law that shall be a constitutional one.

ART. 3. During the remaining portions of that same year the departmental assemblies shall divide their own departments into districts, and the districts into partidos. They shall report the same to the Government, and the Government shall then report to Congress for approval of the same.

Until the divisions stated in the two foregoing articles shall be made, the territory of the Republic shall be temporarily divided by a secondary law.

ART. 4. The internal government of the departments shall be vested in a governor, who shall be subject to the General Government.

ART. 5. The governors shall be appointed by the General Government from among three names that shall be proposed to it for that purpose by the departmental assemblies. In the case of the departments of the frontier, the Government shall not be required to make his appointment from among the three names presented, and in the case of other departments it shall have the right to return the same once only without making the appointment therefrom. The governor's office shall last eight years, and they may be reelected to the same office.

ART. 6. To be governor the requisites are: I. To be a Mexican by birth, or to have been born in any portion of America that, up to 1810, was subject to Spain, but that has since become independent; provided the person in question lived in the Republic at the time of achieving its independence. II. To be a citizen in the enjoyment of his rights. III. To be a native or inhabitant of the department for which he is proposed. IV. To be at least thirty years of age. V. To possess a capital, material or moral, yielding a yearly income of not less than \$2,000. VI. To be a layman.

ART. 7. The powers of the governors are: I. To watch over public order in the home matters of the department. II. To have at his disposal the armed forces that the laws empower him to have for that purpose. III. To keep and enforce the decrees and orders of the General Government, and the acts passed by the departmental assemblies, which



acts shall have the approval of the general Congress in the cases where that is required as per this law. IV. To send to the General Government, together with its own report thereon, all acts passed by the departmental assemblies. V. To appoint the prefects; to approve the appointments of the subprefects of the departments; to confirm the appointment of the justices of the peace; and to remove from office any of these officials, having previously consulted the opinion of the departmental assemblies touching the said removal. VI. To appoint the employees of the department; that is, when their appointment is not expressly reserved to any other authority. VII. To suspend the employees of the department even for three months and to deprive them of one-half of their salaries. VIII. To suspend the municipal councils of the department, with the advice of the departmental. In cases where the governors make use of the last two powers vested in them, they shall immediately report to the General Government that it may determine what it deems best in the matter of suspension. IX. To settle all doubts arising in the municipal elections, and to accept or not, as he may choose, the resignations tendered by the municipal councils. X. To exercise in common with the departmental assembly, and with the right to vote in case of a tie, that power of exclusion mentioned in Paragraph XVII of article 12, and paragraph eighth of article 22 of the fifth constitutional law. XI. To urge the courts and judges to a prompt and upright administration of justice and reporting all omissions to do so to the proper superior authorities. XII. To have the supervision of the offices of finance in the department and in the term to be prescribed by law.

ART. 8. During the temporary absence of the governor an acting governor shall be appointed in the same manner as the proprietary one; and he must possess the same qualifications as the latter. If the absence should be of short duration, the oldest member of the departmental assembly shall take charge of the government. This last person named shall also take charge of the government from the time the said absence begins until the acting governor shall be appointed and duly installed.

ART. 9. There shall be an assembly in each department, to be called the departmental assembly, and it shall be composed of seven members.

ART. 10. Said members shall be elected by the same electors who elect the deputies to Congress. The elections for the assembly shall take place precisely one day after the election of deputies. There shall be elected also seven supplementary members in the same manner as the proprietary ones.

ART. 11. The assemblies that retire shall qualify the elections of the new ones as they come in, and they shall do this with the governor's advice, and subject to what the senate may determine. Said assemblies shall report at once to the senate, but this shall not hinder the new ones coming into office from assuming possession of the same.

ART. 14. The departmental assemblies have the right: I. To propose laws relative to taxes, public instruction, trades, commerce, municipal government, and amendments to the constitution, as provided in article 26 of the third constitutional law. II. To prepare and present their opinion as is required by article twenty-eight of the same law. III. To establish primary schools in all the towns of the department, endowing them sufficiently from the common municipal fund whenever there may be such;

and when there is no such fund they can levy moderate taxes for the purpose. IV. To open up and improve the internal roads of the department, establishing moderate tolls in order to defray expenses. V. To determine upon such measures as may tend to the preservation and betterment of educational institutions, and institutions of public charity, as also all those that foster agriculture, commerce, and the trades. But if they should in any manner be burdensome to the people of the department the said measures shall not be carried into effect until they shall have been previously approved by Congress. VI. To promote, through the agency of the governor, whatever may subserve the prosperity of the department in all its branches, as well as the welfare of the inhabitants. VII. To make, with the governor's aid, all the municipal ordinances of the municipal councils, and also the police regulations of the department. These said ordinances and like measures as they may dictate in pursuance of paragraphs three and four, as well as those under paragraph 5, do not require a previous approval, may be at once set in operation, but subject, nevertheless, to what Congress may afterward determine. VIII. To examine and approve the accounts rendered to them of the collection and expenditure of the municipal funds. IX. To consult the Government in all matters where the government may so require. X. To ask the supreme conservative power to declare when shall the President be in the obligations of changing the ministers of his cabinet for the good of the nation. XI. To elect the President of the Republic, the supreme conservators, senators, and magistrates of the supreme high court of justice and of the court-martial, in the manner provided by the constitutional laws that bear upon that subject. XII. To propose three names to the General Government, out of which shall be chosen the governor for the department. XIII. To make use of the right of exclusion mentioned in articles 12 and 22 of the fifth constitutional law, in the matter of the appointment of magistrates and judges. XIV. To make and annually send to the Government the statistics of their department, adding thereto such remarks as they may deem conducive of the welfare and progress of the department.

ART. 15. The following are the restrictions placed upon the governors and departmental assemblies: I. Neither under the pretext of exercising police powers for taxing can they levy contributions in any other manner than that prescribed in this law, nor can they appropriate the same to other uses than those to which they belong. II. They can take no steps to raise troops, except in the case where they are empowered by law to do so and when they are ordered to do so by the General Government. III. They shall exercise no other authority but that vested in them by this law. Any act of theirs whatever that shall be contrary to this paragraph of this article, and also to the two preceding paragraphs, shall make them seriously liable. IV. The members of the departmental assemblies can not resign their office unless for lawful cause, to be declared sufficient by the assembly itself with the advice of the governor.

ART. 16. At the head town of each district there shall be a prefect appointed by the governor and confirmed by the General Government. His office shall last four years, and he may be reelected to the same office.

462 ART. 17. To be a prefect it is necessary: I. To be a Mexican citizen in the enjoyments of his rights. II. To be a native or

inhabitant of the department. III. To be not less than thirty years of age. IV. To possess a capital, material or moral, that shall yield an income of at least one thousand dollars yearly.

ART. 18. The duties of the prefects are: I. To keep guard in their district over public order and tranquillity, but subject in all things to the Government. II. To keep and enforce the orders of the government of the department. III. To see that the municipal councils do their duty, and in general to keep watch over all matters of police.

ART. 19. At the head town of each partido there shall be subprefect appointed by the prefect and approved by the governor. His office shall last two years, and he may be reelected to the same.

ART. 20. In order to be a subprefect the conditions are: I. To be a Mexican citizen in the enjoyment of his rights. II. To be an inhabitant of the head town of the partido. III. To be at least twenty-five years of age. IV. To possess a capital, material or moral, that yields an income of at least five hundred dollars yearly.

ART. 21. The powers of the subprefect for the partido are the same as those of prefect for the district; but subject to him and, through him, to the governor.

ART. 22. There shall be municipal councilors (ayuntamientos) in the capital cities of the departments, in the towns where they existed in the year 1808, in the seaports whose population shall reach up to four thousand people, and in towns that have eight thousand people. In places that do not have that number of people, there shall be justices of the peace, who shall also be the custodians of the police. There shall be as many of them as the departmental assemblies, with the governor's advice, shall see fit to determine.

ART. 23. The members of the municipal council shall be elected by popular electors in a manner that a law on that subject shall prescribe. The number of alcaldes, aldermen, and procurators will be fixed by the departmental assemblies, with the governor's advice. The number of alcaldes, however, shall not be more than six in each place. The aldermen shall not exceed twelve nor the procurators two.

ART. 24. In order to be a member of the municipal council it is necessary: I. To be a Mexican citizen in the enjoyment of his rights. II. To be an inhabitant of the town. III. To be not less than twenty-five years of age. IV. To possess a capital, material or intellectual, that shall yield an income of at least five hundred dollars yearly.

ART. 25. The following shall be the duties of the municipal councils: To watch over the health and comfort of the public; to have the control of jails, hospitals, and institutions of charity, if they be not private concerns, and also to supervise the school of primary education that are maintained out of the public funds. So as to buildings and repairing bridges, causeways, and roads; to promote the betterment of agriculture, of commerce, and the trades, and to aid the alcaldes (mayors) in preserving public order and tranquillity. But in all these things the municipal councils shall be controlled by the provisions of the laws and regulations.

ART. 26. The following matters shall be of the charge of the alcaldes, namely: To act as peacemakers in the town, to hear and determine verbal litigations, and to dictate such measures as are absolutely necessary, with regard to matters in dispute that can not be safely delayed in order to

bring them to the cognizance of the judges of the first instance ; to hold the preliminary hearing of criminal matters that likewise can not be safely delayed, and to do whatever else may be entrusted to them by the proper courts or judges; also to preserve public order and tranquillity. Subject in all, however, to the subprefects, and through them to the other superior authorities.

ART. 27. The justices of the peace, who shall also be keepers of the police, shall be proposed by the subprefects, appointed by the pre-  
463 fects, and confirmed in the appointment by the governor. Their office shall last one year, and they can be reelected to the same.

ART. 28. In order to be a justice of the peace the requisites are : I. To be a Mexican citizen in the enjoyment of his rights. II. To be an inhabitant of the town. III. To be not less than twenty-five years of age.

ART. 29. These justices of the peace shall exercise within their proper towns those same powers that are given to alcaldes and to municipal councils, but subject, nevertheless, to the subprefects and through them to the other superior authorities. In places that fall short of one thousand people the powers of the justices of the peace shall be confined to preserve public tranquillity, to be the custodians of the police, and to have all such judicial proceedings in criminal and civil matters that on account of the exigence of the occasion can not be delayed until taken to the nearest proper authorities.

ART. 30. The offices of subprefects, alcaldes, justices of the peace that are also the controllers of the police, aldermen, and municipal procurators are municipal popular officers and can not be resigned except for lawful cause that shall appear sufficient in the eyes of the governor ; or again to be resigned only in case of reelection to the same position.

ART. 31. A secondary law shall be passed to minutely set up whatever shall have reference to the exercise of their powers and duties by these prefects, subprefects, justices of the peace, aldermen, and municipal procurators, as well as the manner of filling up vacancies that shall occur in their offices ; also stating what shall be the salaries for the governors, members of the departmental assembly, and prefects, together with the privileges to which they shall be entitled.

#### *Sixth law.—Amendments to the constitutional laws.*

ART. 1. There shall be no changes made in any of the articles of this constitution within the next six years from its passage.

ART. 2. In the case of amendments that shall be proposed after the six years have expired, paragraph 10 of article 12, of the second constitutional law ; and paragraph 1 and 3 in article 26 ; article' 28, 29, and 38, of the third constitutional law ; and paragraph 2 of article 17 of the fourth constitutional law must be strictly complied with.

ART. 3. In the case of proposals to Congress that have reference to amendments of the constitution, as well as in proposals seeking to amend all other laws, the chamber of deputies shall have the right not only to amend the wording of the bill as projected, but also to add to or modify the same in order to have the law in the best shape possible.

ART. 4. Bills for amending the constitution that fall within article 38 of the third constitutional law shall be done subject to the provisions thereof.

ART. 5. The right to interpret the articles of the constitution when doubts occur shall belong exclusively to the general Congress.

ART. 6. On coming into office all public officials shall take an oath to keep and enforce the constitution as he may be called on to do so, and he shall be liable for breaches that he may commit, or which he shall not impede.

#### TRANSIENT ARTICLES.

ART. 1. On the following day after that for which Congress calls  
464 for an election of deputies, the election for members to the departmental assembly shall be held, which said election in places where there shall be no retiring assembly shall be duly qualified by the municipal council of the capital, subject, nevertheless, to what the Senate may afterwards determine.

ART. 2. Congress shall fix the days for the holding of the elections mentioned in article 8 of the third constitutional law, and article 2 of the first constitutional law. The Government shall fix the dates for the holding of those stated in paragraphs 1, 2, and 3 of the second constitutional law.

ART. 3. On this occasion there shall be a committee of nineteen representatives appointed by Congress by plurality of votes to discharge those electoral functions that should be discharged by the chamber of deputies alone, as per paragraph 6, article 3, of the second constitutional law, and paragraph 1 of article 2 of the third constitutional law; also those that belonged only to the Senate as per the fourth constitutional law, and articles 5, 10, 11, and 14 of the fifth constitutional law.

ART. 4. The whole of Congress shall discharge the electoral functions that by paragraph 6 of article 3 of the second constitutional law belong to the Senate alone. Also those that belong to the supreme executive power, as per paragraphs 3, 4, and 8 of the third constitutional law, and those that belong solely to the chamber of deputies, as per article 2 of the fourth constitutional law, and articles 5, 10, 11, and 14 of the fifth constitutional law.

ART. 5. The appointment mentioned in article 12, paragraph 12, of the second constitutional law shall on this occasion be made by the supreme conservative power in the course of the first month of its installment in office. And on the same day it shall hold the election for chairman and secretary, as stated in article 20 of the second constitutional law.

ART. 6. The first constitutional Congress shall open its sessions on the day that shall be stated in the call for elections to the same, and its sessions of the first part of the year shall terminate on the 30th day of June, 1837.

ART. 7. While organizing the superior courts of the departments, for the present those judges that are the actual incumbents thereof shall be respected in their offices upon such conditions as shall be prescribed by a law on that subject. The said law shall also state the manner in which they are to be elected to the said positions, following as far as possible the provisions of this constitution.

ART. 8. The terms of office as fixed for each one of the public officials by the terms of these constitutional laws shall begin to run on the first day of Jan., 1837, whatever may be the day on which they come into the possession of the office.

465 Mr. REYNOLDS. I also offer in evidence law of Congress of December 30th, 1836 (see Mexican Statutes at Large, vol. 3, page 258), which, in compliance with the constitution of 1836, divides the territory of Mexico into departments, which said law is as follows:

"Number 1807. December 30, 1836. Law dividing the Mexican territory into departments.

"ART. 1. The Mexican territory is divided int' as many departments as there were States, with such modifications as following:

"ART. 2. That which was the State of Soahuila and Texas is divided into two departments, each one to consist of its own proper demarcations. New Mexico shall be a department. Upper and Lower California shall be a department. Aguascalientes shall be a department comprising the territory it embraces at present. The territory of Colima is added to the department of Michoacan. The territory of Flaxcala is added to the department of Mexico. The capital of the department of Mexico is the city of that name.

"ART. 3. The governor and departmental assembly of Coahuila shall exercise their authority only within the department of that name.

"ART. 4. When peace and order shall have be'n restored in the department of Texas the Government will take such measures as may be necessary to organize the authorities there, and it shall fix the capital thereof wherever it may deem it best.

"ART. 5. In the department of the Californias the Government shall name the capital of the same until the constitutional elections shall be held.

"ART. 6. The departmental assemblies shall temporarily divide their respective departments into districts and these into partidos; prefects and subprefects will also be appointed, as well as municipal councils and justices of the peace, as provided by the constitutional laws.

"ART. 7. The tribunals of the first instance shall be temporarily organized, subject to the conditions of article twenty-seventh of the fifth constitutional law."

Mr. REYNOLDS. I now offer in evidence the law of January 17, 1837 (see Mexican Statutes at Large, vol. 3, page 260), which creat's a national bank and authorizes and creates a mortgage to that bank of all the  
466 lands of the nation and in all the territory of the Republic for the purpose of securing and finally discharging the debt therein named and provided for, which said law is as follows:

"Number 1811. Jan. 17, 1837. Bases for the creation of a national bank for the extinction of the copper money. The coinage of copper money is ordered to cease, and other provisions are given relative to money other than gold or silver money.

"ART. 1. The coinage of money other than gold or silver money shall cease immediately in all the mints of the Republic, and enever again shall it be resumed without an express order fr'm Congress, which order from Congress shall determine its weight, as well as the amount to be struck. The Government shall at once see that the molds that were exclusively used for coinage of this kind of money shall be condemned and rendered unavailable for further use.

"ART. 2. The Government shall at once create and regulate a national bank, for the purpose principally of extinguishing the copper money; and



the government of said bank shall be entrusted to persons chosen from among the several classes of society in such terms as the said regulations will provide, which persons have no other duty to the Government than to render to it an annual statement of the accounts under their management.

"ART. 3. The following are declared to be the funds of the bank for the proposed extinction of the copper coin, namely: I. All the real estate of the nation that lies within the territory of the Republic. II. All assets of the public treasury due up to the year 1836, whatever their nature or place of location, with the exception of maritime duties. And in order to collect the said assets the bank shall have the right to enter into such transaction and to make discounts on the same as it may deem proper. III. The receipts from the taxes on tobacco, that shall again be brought back to the license system in all of the Republic, except in the department of Yucatan. IV. The receipts for the whole of this year of the farm and city taxes, and of licenses in the departments of Mexico (the capital excepted), Puebla, Guanajuato, Michoacan, and Jalisco, which receipts shall be collected by the bank and restored by it to the Government whenever the other branches of its funds shall permit. V. The new coin that shall be struck to replace the actual one (the amount of which shall be what Congress shall determine upon hearing the opinion of the bank), and all the metal and utensils that shall be rendered worthless on account of the abolition of the copper money, and on account of the melting of that already collected and extinguished; provided the persons that sold the same made no stipulation to the effect that the metal should be returned to them. VI. The amount of all pecuniary fines imposed by law

467 on counterfeiters of money, that may be actually levied. VII. All deposits of money that it shall take at interest. VIII. The small premium established for directly exchanging the actual coin for money of the new coin or for silver. IX. And whatever shall accrue to the Government from the negotiations of the Fresnillo mines. X. And finally all import duties on goods that the Government may see fit to impose; provided they are not contributions or burdens on the public.

"ART. 4. The bank shall manage its own funds totally and independently of the Government, subject to the rules that shall be prescribed in the proper regulation of the matter. The president of the board of directors shall be appointed by Congress.

"ART. 5. This bank shall have no power to issue bank notes without the express authorization by Congress, except those necessary for the extinction of the copper money in circulation; it will also issue bills of credit for the amount of the monies deposited with it at interest, and it may allow on the same as much as 18 per cent per annum proportionately as the number of months may be that the holders thereof shall delay in presenting the same for payment.

"ART. 6. The bank is authorized to negotiate a foreign loan of money to the amount of forty millions of dollars upon the security of the funds assigns to it, seeking after the greatest advantage to be derived from the same.

"ART. 7. When the bank shall have been duly installed in the possession of all the funds now assigned to it, and when its branch offices shall have been duly organized (which the Government will see that it be done at the earliest possible date), the public will be duly notified, so that

the possessors of the actual copper money, who may desire of their own free will to have the same exchanged, may be able to take the same to such places as may be determined beforehand, where they shall have it exchanged for silver or for copper money of the new coin, or for bank notes of this bank, or premiseously for all of these three species of currency, as those tend'ing the same may desire and as the funds in the bank may permit. If the exchange shall be for silver money or for copper money of the new coin, these parties shall have the same exchanged at the small discount that the Government may fix, but which shall not exceed four or six per cent. And if the exchange shall be for bank notes no such discount shall be made; on the contrary, the established interest on the same shall begin to run.

"ART. 8. The bank shall cause all the copper money coming into its possession to be melted, saving such as may be absolutely necessary for its expenses and liabilities; but even this shall not be put again in circulation before having the same recoined once more; and the expression on its face shall specify that the value of the same is but one-sixteenth of a real for each cuartilla.

468 "ART. 9. There is no change made in the nominal value of the present copper money, and it may be taken in ad valorem in all the offices of the public finance for the amounts paid in and according to the provisions of the laws in force until now.

"ART. 10. No person or authority, not even the supreme ones, shall have power to dispose of the bank funds for any other purpose than that for which they are created. Any act in derogation of this stipulation is now declared to be an offense against private property redressible by private action; it will also create a grave liability and indemnity shall be sought by levying upon the offender's goods.

"ART. 11. The Government shall detail these bases in a formal decree that shall be issued by it at the earliest date possible."

Mr. REYNOLDS. I also offer in evidence the decree of the Supreme Government of January 20th, 1837, carrying into execution the law above named and providing the manner of carrying on the national bank and requiring the governors and officers of the several departments to turn over to the bank all funds and properties pledged to it by the mortgage. This decree sets out no new matter; it gives out in detail the contents of the law, January 17th, 1837 (*supra*).

Art. 22 stipulates "that the bank shall take the funds assigned to it subject to all existing incumbrances," and article 28 of the same reads as follows: "The governors of the departments and the general offices shall, as soon as this decree comes to them, see that the offices now in charge of those funds that by law are assigned to the bank, proceed to balance the accounts relative to the said funds and to send a copy of the statement to the minister of finance, another to the Government, or to the respective general office, its superior, and another to the board of directors to the said bank at the said time, all properties and revenues and employees of the same, together with the regulations and instructions relating to those matters."

Mr. REYNOLDS. This regulation is decreed under that provision of the law of January 17th, 1837, cited, which reads: "ARTICLE 11. The Government shall detail these bases in a formal decree, *ect.*"

I also refer the court, for the purpose of showing the recognition of the existence of the department at all times from the adoption of the constitution of 1836 up to and after the date at which it is claimed the grant in this case was made, the following laws and circulars :

The law of March 20th, 1837 (see Statutes at Large of Mexico, vol. 3, page 323), which provides for the internal government of the departments.

I offer in evidence the law of April 4, 1837 (see Mexican Statutes at Large, vol. 3, page 352), which authorizes the Government to colonize the lands of the Republic and repeals all prior colonization laws :

469 "Number 1847. April 4, 1837. Law. To colonize the lands that are and ought to be the property of the Republic. All other laws on colonization are repealed so far as repugnant to this act.

"The Government, with the advice of the council, shall proceed to colonize the lands that are or ought to be the property of the Republic; and this shall be done by means of sales *enphytensis* or mortgages, applying the receipts thereof (which in the case of sales shall not be less than ten reals per acre) to the payment of the national debt existing or to be contracted; but always reserving a sufficient land to comply with what was promised to the soldiers that fought for the independence and for such rewards and concessions as Congress may decree to Indian tribes and nations, and to those who have taken part in quelling the revolt in Texas; the Government in doing that shall not be bound by the colonization laws passed prior to this one, and all parts of the same that are contrary to this stand repealed, and the prohibition contained in article 11 of the law of April 6th, 1830, is again repeated here.

Mr. REYNOLDS. I also offer in evidence the decree of April 17, 1837, by which all departmental revenues are secured to the General Government, recognizing, however, the right of the national bank to the property conveyed to it by the mortgage of January 17th, 1837.

"Number 1855. April 17, 1837. Decree of the Supreme Government. Of the revenues that for the present constitute the national exchequer: direction, management, and distribution of the same. Creation of the superior chiefs of finance and of the collecting and disbursing officers.

"ART. 1. Until the general Congress shall establish what the revenues of the national treasury shall be, the same will consist of those revenues, contributions, and properties of which the Government is in possession, as also of those revenues, contributions, and properties that were established and acquired by the departments under the federal system, and which were already in existence when the decree of the 3rd of October of 1835 was established.

"ART. 2. The revenues, contributions, and properties that by law of the 17th of January last were assigned to the national bank are excepted from the operation of the foregoing article, until the object for which the bank was created shall be fulfilled.

"ART. 3. The direction, management, and distribution of the national exchequer shall be effected in the departments, beginning from the time when this decree shall be published, and under such officers as are mentioned in the same. Therefore the operation of the decree of the 9th of January, 1836, ceases, which decree prohibited any alterations to be made in the manner of collecting and disbursing the revenues of the departments.

470 "ART. 4. There shall be created in every one of the departments superior chiefs of finance, with such powers as shall be given to them in this decree. All other employees of the public exchequer shall be subordinate to them in their respective districts in such cases and in such manner as shall be prescribed hereinafter.

"ART. 5. The administration and management of the public funds is divided between collecting offices and disbursing offices. The first shall collect such taxes as constitute the public exchequer, and watch over the preservation, increase, and collection of the proceeds of said taxes. The second shall have charge of the expenditure of the said national funds among the several branches of public government. The former will be called revenue administrations and the latter departmental treasuries.

"ART. 73. All sales and purchases made for the benefit of the public exchequer, and which shall be for not less than five hundred dollars, shall, unfailling, have to be so made at auction sale meetings (*juntas de almoneda*), at the capitols of the departments of the following persons, to wit: The supreme chief of finance, the departmental treasurer, the fiscal procurator of the exchequer, the first *alcalde*, and the auditor of the treasury, which last-named person will also act as secretary of the meeting. The proceedings held at these meetings shall be recorded in a book for that purpose, and subscribed to by all the members. A copy thereof will be sent to the superior chief of finance for such ends as may be proper, and in order that he may account thereby to the Supreme Government.

"ART. 74. The supreme chiefs of finance shall hold finance meetings (*juntas de hacienda*) at least twice every month and on such other dates as may be necessary to discuss matters of paramount importance. Said meetings shall be composed of the said chief of the departmental treasurer, the fiscal procurator of the exchequer, the chief revenue administrator, and the auditing officer of the treasury, which last-named person shall also act as the secretary of the meeting.

"ART. 75. The object of the finance meetings shall be to promote the increase and good success of the incomes belonging to the exchequer; as also the best and most expedient manner of collecting the same, and such matters of economy as shall be advisable touching their expenditure; likewise to expedite such grave and complicated matters as the superior chief shall present for their consideration, and to notify this last-named official of any bad management or behavior, nonfeasance, and such faults of that descriptions that they may notice in the person of the finance employees of the department.

"ART. 76. The proceedings of these meetings shall be recorded in the proper book to be kept for that purpose, and shall be subscribed to by all the members thereof; also an authorized copy thereof shall be sent to the superior chief of finance, so that he may thereby account to the Government when necessary."

Mr. REYNOLDS. I also offer in evidence the law of December 7, 1837. (See Mexican Statutes at Large, volume 3, page 443, which requires the governors of the departments to preside at all sales of property, &c.)

471 "Number 1900. December 7, 1837. Law. Powers of the Government in the matter of finances. This law to be in force until the decree of the 17th of April last can be revised.

"ART. 1. Until the decree of the 17th of April last, issued by the Government, can be revised, and until the law shall pass by which shall be

settled in what manner are governors to exercise such power as is given to them by article 7th, paragraph twelfth, of the sixth constitutional law, they shall, in the exercise of said power: 1st. Be present at and authorize in person, in the capitals (and in other places of the department through the inferior political authorities thereof), the balance of the accounts made monthly and yearly by the chief officials of the offices of finance; likewise, to report to the Supreme Government at once any abuses or faults that they may notice. II. To preside at the juntas de almoneda, having the vested power to postpone further of these meetings until in the next one or two subsequent meetings the matter involved can be thoroughly discussed.

"ART. 2. In the exercise of the same faculty, the governors may: 1st. Be present at the inspection of bills of exchange in the cash vaults. II. Furnish the required consent that by right should be given by the general directory of the revenues, for the appointment of visitors and comptrollers; this, however, will not bar the superior chiefs from notifying the said office at once. III. Suspend, gubernatively, with such information as they may get from the superior chief, such inferior employees of the offices of finance, and such clerks thereof as fail to perform their duty or excite suspicion; and also they shall at once report the matter to the Supreme Government.

"ART. 3. The foregoing articles do not in any manner limit the powers of the governors as vested in them by article' 65 and 66 of the said decree of the Government; hence they may exercise the said powers even outside of the locality of their residence, and in such manner as prescribed by the first part of article 1st of this decree."

Mr. REYNOLDS. I also offer the circular of April 11th, 1838 (see Mexican Statutes at Large, volume 3, page 480, which refers to the departments).

I also refer the court to the law of April 17, 1838 (see Mexican Statutes, ), which refers to the respective departments.

I also refer the court to the circular of April 27, 1838 (see Mexican Statutes at Large, page 483, 3rd volume, which refers to the governors of the departments.)

I also offer in evidence the entire 3rd volume, Mexican Statutes at Large, as containing all laws and decrees passed or published from the date of the constitution of 1836, up to and after the 12th day of April, 1838, for the purpose of showing that no law or decree was passed or published modifying or changing the central character of the Government created by that constitution.

472 Here the defendant rests its case.

And be it further remembered, that afterwards, to wit., on the sixteenth (16) day of December, the same being the fifteenth (15) day of the regular December term, 1892, of this court, the following further proceedings were had, to wit:

ALGODONES LAND CO., PLAINTIFF,	} Santa Fe, No. 47. Denver, No. 1.
vs.	
THE UNITED STATES, DEFENDANT.	

The above-entitled cause came on to be further heard. There appeared Matt. G. Reynolds, esq., U. S. atty., and Earl B. Coe, esq., A. M. Steven-





one hundred and eleven (111), one hundred and twelve (112), and twenty (20) lines on page one hundred and thirteen (113), journal book, Santa Fe, 1.

475 Which said decree is in the words and figures following, to wit :

In the United States court of private land claims, at Denver, Colorado.

EARL B. COE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT. }

*Decree.*

This cause having come on to be heard upon the petition of the petitioner, the answer of the respondent thereto and the proofs taken in said cause, and having been argued by E. M. Sanford, esq., A. M. Stevenson, esq., and S. L. Carpenter, esq., counsel for the petitioner, and by Matt. G. Reynolds, esq., United States attorney of this court, counsel for the respondent, and the court having duly considered the same and being well advised in the premises doth find:

That the land claimed by the petitioner and hereinafter described, is situate in the Territory of Arizona, in the United States of America, and the respondent acquired sovereignty thereto by virtue of a treaty concluded between the United States of America and the Republic of Mexico, at the City of Mexico, in said Republic, on the 30th day of December, A. D. 1853, and commonly known as the "Gadsden treaty."

476 That prior to the Government of the United States of America obtaining sovereignty over the territory included within the Gadsden treaty, or purchase, the land claimed by the petitioner and hereafter particularly described was situate within the State of Sonora, in the Republic of Mexico.

That on the 20th day of May, 1825, in pursuance of authority, the honorable constituent congress of the provisional government of the State of Sonora and Sinaloa passed law number 30, regulating the manner of selling or granting vacant lands within the State and providing a system of procedure therefor.

That on the 11th day of July, 1834, the honorable constituent congress of the State of Sonora passed law number 26, sections 3, 4, 5, 6, and 7 of chapter 9 of which law reenacted and enlarged the law of May 17th, 1825, before referred to, which said law of July 11th, 1834, provided a system of procedure for the selling or granting of the public lands within the State of Sonora, and also provided among other things, in substance and effect, that the treasurer-general of the State was authorized and empowered, under certain rules and regulations therein set forth, to make sales of vacant lands within the State to purchasers possessing the necessary means, and to issue title upon such sales.

That on the 17th day of April, 1837, the Supreme Government of the Mexican nation passed a law providing, among things, that all purchases and sales made on account of the public treasury, and which were in  
477 excess of \$500, must be made by an auction board, known as the junta de almoneda, consisting of certain of the officers of the State mentioned in said law and requiring that said board of junta de almoneda, or board of sale, should, in the event of a sale being made for a greater amount than \$500, report the same to the Supreme Government.

That on the 4th day of January, 1838, Don Fernando Rodriguez, a native Mexican citizen, residing in the city of Hermosilla, in said State of Sonora, then possessing the necessary qualification and necessary means, presented to Jose Justo Milla, then being auditor of the treasury and acting treasurer-general of the State of Sonora, a petition in due form of law, applying for the sale of certain of the vacant lands of the State, which lands are hereinafter particularly described.

That under and by virtue of said petition, laws, rules, and regulations such proceedings were thereafter duly and regularly had; that on the 10th day of April, 1838, at public auction, the Republic of Mexico, by the junta de almoneda (board of sale), and the State of Sonora, by Jose Justo Milla, auditor as aforesaid and acting treasurer-general of said State, duly and regularly sold the vacant lands claimed by the petitioner, and hereinafter particularly described, to Don Fernando Rodriguez, he being the highest bidder therefor, for the sum of \$400.00.

That afterwards, on the 12th day of April, 1838, the said Jose 478 Justo Milla, as such acting treasurer-general, then being duly authorized and empowered by law in the premises, duly and regularly executed and delivered to the said Don Fernando Rodriguez the testimonio or conveyance of title to the said vacant lands so as aforesaid sold to him, to wit, the Rancho El Paso de los Algodones, hereinafter more fully and particularly described.

That thereafter the sale of said lands to the said Don Fernando Rodriguez and the issuing of title thereto to him was approved by the Supreme Government of the nation, and the State of Sonora, acting by and through Leonardo Escalante, the then governor of said State.

That by the said testimonio or conveyance of title and the proceedings theretofore had relating to the sale and conveyance of said land, the title in fee simple to the said Rancho El Paso de los Algodones passed to the said Don Fernando Rodriguez, his heirs, children, and successors.

That all the laws, rules, requirements, and regulations relating to the sale of said vacant lands so sold as aforesaid, and hereinafter particularly described, were duly and regularly followed and complied with in the making of said sale and conveyance.

That the original record or matrix of the proceedings in making said sale and conveyance to the said Don Fernando Rodriguez are now, and 479 ever since the said 12th day of April, 1838, have been, on file

and of record in the official archives of the State of Sonora, in the Republic of Mexico, and that the same are in the Spanish language and are genuine.

That this action was originally commenced by The Algodones Land Company, a corporation duly organized and created under and by virtue of the laws of the Territory of Arizona; that since the commencement of the same, Earl B. Coe, the present petitioner, has for value succeeded to the rights and interests of the said The Algodones Land Company in and to the land hereinafter particularly described.

That the petitioner, Earl B. Coe, holds and possesses said Rancho El Paso de los Algodones, hereinafter more particularly and fully described, under and by virtue of sundry mesne conveyances from the said Don Fernando Rodriguez, his heirs, and assigns.

That the said lands embraced in the said Rancho El Paso de los Algodones, and hereinafter particularly described, are nonmineral in character.

That the said Earl B. Coe, petitioner, claims said Rancho El Paso de los Algodones, hereinafter particularly described, under a title from the Government of the Mexican nation, which said title was complete and perfect on the 30th day of December, A. D. 1853, the date when the United States acquired sovereignty to said territory.

That the title to the said Rancho El Paso de los Algodones is valid, and that the said petitioner, Earl B. Coe, has a good and lawful right thereto.

480 That the extent, location, and boundaries of said title and grant of sale of the Rancho El Paso de los Algodones are as hereinafter described.

That the issues joined upon the pleadings herein are found in favor of the petitioner and against the respondent, and that all of the material allegations contained in the petitioner's petition are true.

Wherefore, under and by virtue of law and the power vested in the United States court of private land claims, regularly sitting at Tucson, in the Territory of Arizona, by virtue of an act of Congress of the United States of America entitled "An act to establish a court of private land claims and to provide for the settlement of private claims in certain States and Territories," approved March 3rd, 1891, it now here, on the 24th day of February, 1893, in open court, by the court considered, ordered, adjudged, and decreed that the title of the petitioner, Earl B. Coe, be and the same is hereby wholly, fully, and finally adjudged valid and confirmed to all those certain pieces and parcels of land and premises located, lying, and being in the county of Yuma, in the Territory of Arizona, named, known, and described as follows, viz:

Five (5) square leagues of land, more or less, contiguous to the Colorado River, situated in front of the confluence of said river with the Gila River and opposite a point named El Paso de los Algodones and known as the Rancho El Paso de los Algodones grant, more particularly  
481 described as follows, to wit: Section one (1), two (2), eleven (11), twelve (12), twenty-five (25), thirty-six (36), three (3), ten (10), fourteen (14), thirteen (13), twenty-four (24), twenty-three (23), twenty-six (26), thirty-five (35), thirty-four (34), in township number ten (10) south, range twenty-five (25) west of the Gila and Salt River base and meridian; also sections four (4), five (5) and six (6), seven (7), eight (8), seventeen (17), eighteen (18) and nineteen (19), the northwest quarter of section three (3), the north one-half and southwest quarter of section nine (9), the west one-half of section twenty (20), the north one-half and southwest one-quarter of section thirty (30), and northwest one-quarter of section thirty-one (31), in township ten (10) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also sections one (1), two (2), three (3), four (4), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), and northwest one quarter ( $\frac{1}{4}$ ) of section twenty-four (24), and the north one-half ( $\frac{1}{2}$ ) and

the southwest one-quarter ( $\frac{1}{4}$ ) of section twenty-six (26), and section five (5), in township nine (9) south, range twenty-four (24) west of the Gila and Salt River base and meridian; also section six (6) and the northwest quarter ( $\frac{1}{4}$ ) of section five (5), and the north one-half ( $\frac{1}{2}$ ) and the south-west one-quarter ( $\frac{1}{4}$ ) of section seven (7), in township nine (9) south, range twenty-three (23) west of the Gila and Salt River base and meridian; sections nineteen (19), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32), and the south half ( $\frac{1}{2}$ ) of sections twenty (20) and twenty-one (21), and the northwest quarter ( $\frac{1}{4}$ ) of southwest quarter ( $\frac{1}{4}$ ) of section twenty-eight (28), in township eight (8) south, range twenty-three (23) west, Gila and Salt River base and meridian; also sections twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty-four (34), thirty-five (35), thirty-six (36), thirteen (13), fourteen (14), twenty-two (22), twenty-eight (28), and thirty-three (33), in township eight (8) south, range twenty-four (24) west, Gila and Salt River base and meridian; also that certain tract of land lying north of the San Bernardino base and meridian and west of the village of Yuma, and within the said county of Yuma, described as follows:

Commencing at the southeast corner section thirty-one (31), township ten (10) south, range twenty-four (24) west, thence ranging south to the international boundary line, thence west along said boundary line to the Colorado River, thence up the main channel of said river to a point west of said southeast corner of said section thirty-one (31), thence east along a westerly prolongation to the south line of said section to the southeast corner of said section and place of beginning, and intended to cover and describe all tracts of land not hereinbefore specifically mentioned as lying along and upon the left bank of the Colorado River, between the boundary line of the United States and the Republic of Mexico and the confluence of the Gila and Colorado rivers, and conveyed by said grant title, containing five (5) square leagues of land, more or less, save and except that portion of the above-described land and premises particularly described in a certain patent issued by the Government of the United States, conveying to the mayor of the village of Yuma, in trust for the use and benefit of the inhabitants of said village, the land in said patent described, which patent is now on file and of record in the office of the county recorder of the county of Yuma, in said Territory of Arizona.

Done in open court, this the 24th day of February, 1893.

JOSEPH R. REED,  
*Chief Justice.*

The parties to this action, by their respective attorneys, having agreed in open court that the decree entered herein may be entered at Santa Fe, New Mexico, as of this day, it is so ordered by the court.

Tucson, February 24, 1893.

JOSEPH R. REED,  
*Chief Justice.*

And be it further remembered, that afterwards, to wit, on the twenty-first (21) day of August, the same being the eighteenth day of the August term, A. D. 1893, the following proceedings were had, to wit:

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MONDAY, *August 21st*, 1893,

Court met this day at 10 o'clock a. m.

Present: Hon. Joseph R. Reed, chief justice; Hon. Thomas C. Fuller, associate justice; Hon. William W. Murray, associate justice; Hon. Wilbur F. Stone, associate justice.

Also present: Matt. G. Reynolds, esq., United States attorney, and the other officers of the court as on Friday, the 19th, 1893.

Absent: Hon. Henry C. Sluss, associate justice.

The following proceedings were had to wit:

EARL B. COE, PLAINTIFF,	} Paso de los Algodones land grant.
<i>vs.</i>	
THE UNITED STATES, DEFENDANT.	} No. 49.

Now at this day Mr. Matt. G. Reynolds, U. S. attorney, presented an application for an appeal to the Supreme Court in the above-entitled cause, and the same was signed and allowed by the court.

485 UNITED STATES OF AMERICA, *ss.*:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing four hundred and eighty-four (484) pages contain a full, true, and complete transcript of the records and files of the court of private land claims, of all proceedings had in a cause filed therein in which Earl B. Coe is plaintiff and the United States is defendant, for the confirmation of a certain private land claim, commonly known and designated as the "El Paso de los Algodones grant."

Witness my hand and the seal of said court at my office in Santa Fe, Territory of New Mexico, this the twenty-first (21) day of August, A. D. 1893.

[SEAL.]

JAMES H. REEDER,

*Clerk Court of Private Land Claims.*

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In the court of private land claims.

EARL B. COE, PLAINTIFF,	} No. 47.
<i>vs.</i>	
THE UNITED STATES, DEFENDANT.	

*Opinion of the court.*

This is a suit for the confirmation of an alleged grant of lands made in 1838 to one Don Fernando Rodriguez, through whom plaintiff claims by a claim of mesne conveyances. The documentary evidence introduced at the trial shows that on the 4th of January, 1838, said Rodriguez presented his petition to the treasurer-general of the State of Sonora for a grant of five square leagues of land at the confluence of the Colorado and Gila rivers (within the present boundaries of the Territory of Arizona).

Thereupon a commissioner was appointed by the treasurer-general who was directed to ascertain whether the grant would conflict with the rights of any other parties; also to survey and appraise the lands and offer the same for sale under the provisions of certain designated laws of the State.

This commissioner in the performance of the duties assigned him caused the land to be appraised and surveyed, and thereafter offered the same for sale at public outcry on each day for thirty consecutive days.

487 In his petition, Ro'riguez offered to pay for the land the amount at which it should be appraised, and no other person having bid at any of the public offers, the record of the proceedings was returned to the treasurer-general for final action. That officer thereupon referred the matter to the promoter fiscal of the public treasury who, upon a review of the proceedings, declared that Rodriguez ought to be admitted to a composition with the treasury of the State for said lands and recommended that three public offers, with the following language:

"This is the report of the undersigned fiscal. Your honor (the treasurer-general) will do what is proper in the premises." The treasurer-general thereupon ordered that three public offers of sale be made of said lands in the manner established by law. The "junta de almoneda," or board of sale, thereupon proceeded to make three public offers of sale on consecutive days and on the third offer declared Rodriguez to be the purchaser.

Thereafter the treasurer-general executed a formal instrument in writing in which, after referring to the proceedings theretofore had relating to the subject, he declares that in the exercise of the faculties conceded to him by the laws, decrees, and regulations and the superior existing orders in relation to lands, he does "by these presents and in the name of the free, independent, and sovereign State of Sonora, as well also of that of  
488 the august Mexican nation," confer upon Rodriguez the land in question. This instrument, together with the record of the whole proceeding, was retained in the office of the treasurer-general as a record, and a certified copy of the whole was delivered to said Rodriguez as the evidence of his title.

The "junta de almoneda" or board of sale, consisted of certain officers of the State or department of Sonora, among whom was the treasurer-general. But the powers of the board with reference to the sale of public lands were conferred and defined by the laws of the Central Mexican Government. The questions arising in the case relate to the genuineness of the alleged record of the proceedings and the legality of the action had in making the sale.

Coe & Carpenter, A. M. Stevenson, and E. M. Sanford, for plaintiffs.  
Matt. G. Reynolds, for the United States.

#### Opinion by Justice SLUSS:

The evidence in the case is sufficient to show the title papers to be genuine. It therefore becomes necessary to determine whether the grant set up was legally made by proper authority.

489 The principal contention between the parties, both upon the evidence and in argument, revolved about the question whether the State of Sonora at the time this grant was made had the power to make it; or whether, on the other hand, the Supreme Government of Mexico had the power to make it.



It seems to be unquestionable that the one or the other was vested with power to make the grant. It is not deemed necessary at this time to express a final opinion upon the question as to which, the State or the nation, was seized with the title or vested with the power to make the grant. Evidently if the State of Sonora had an existence and owned the land, or was authorized to dispose of it, the proceedings of the officers resulting in the sale were sufficient to pass the title.

It is our opinion that if it be held that the Mexican nation alone could make the grant, the proceedings of the officers shown in the evidence were sufficient to vest at least an equitable if not a full legal title in Rodriguez against the nation.

It is contended, in opposition to this view, that the State of Sonora had been abolished by the change from the federal to the centralized form of National Government, and that in place of the State there was only a department of the Supreme Government, and that the officer making the sale purported to act solely as officers of the former State, and not as officers of the then existing department. It is unquestionable that 490 the sale, that is, the essential act of passing the title, was performed by the board of sales (*junta de almoneda*). It was not made any of the individual officials who were members of the board, but by the board in its organized capacity as an official body.

The board of sales was wholly unknown to the State law of Sonora and derived no authority from any law of Sonora as a State. It was an official body expressly created by the Mexican National Government, and invested with absolute power to make sales of public lands within that department.

Now, the act of making the sale is the essential thing—the gist and meat of the transaction. And it is the actual authority with which the board was invested, and not what the individual members of the board thought about the source of that authority, which gave effect and validity to it act in making the sale.

By section 73 of the decree of April 17, 1837, these several officers composing the board, being officers of the former State and of then existing department, were taken and constituted a board of the nation, clothed with national authority to make sale of the land.

The board, so created and so authorized, did, in fact, make the sale. Now, shall it be said that the misrecital of the source of the authority of the board shall vitiate the valid act of that board? Which, in reason, is the greater, the actual fact or the mere recital, or rather misrecital, 491 of the fact? The recital of the source of the board's authority under which it was acting, or the authority under which the members thought they were acting, was unnecessary, and being unnecessary was immaterial.

The material thing to be recited were the fact of the sale and the fact as to who made it; all else was surplussage and mere opinion and did not inhere in the essence of the transaction itself. Where an officer has power to do a particular act, and does that act, he can not be permitted to destroy the validity of his own lawful act by a false recital or misrecital of a void authority, as that by which he was empowered.

In the case of *U. S. v. Clark*, 8 Peters, p. 436, Lieutenant-Governor Coppinger made a grant of land to Clark, and recited in it that he made

the grant under the authority of a certain royal order of October 29th, 1790, which order, says the court, did not authorize him to make the grant. But it appeared that under other regulations he was authorized to make the grant. The grant document was susceptible of the construction that he was acting not only under the *vid* authority, but also under the valid authority. The court held, that inasmuch as he had valid authority to make the grant and did make it, and the grant could be construed to be founded upon the valid authority, it should be upheld. The court uses the following language:

“We can not think that the recital of a fact, entirely immaterial, on which the grant does not profess to be found, can vitiate an instrument reciting other considerations on which it does profess to be founded, if the matter, as recited, be sufficient to authorize it. Without attempting to assign motives for the recital of that order, we are of the opinion that in this case the recital is quite immaterial, and does not affect the instrument. The real inquiry is, whether Governor Coppinger had power to make it.”

In the case of *Chouteau v. U. S.*, 9 Peters, p. 137, it appears from the opinion that a grant was made by the lieutenant-governor of the province. That lieutenant-governors of provinces had no authority to make grants. But in the course of the trial it appeared that the lieutenant-governor was also *ex officio* subdelegate, and that subdelegates had authority to make grants. It is apparent that he intended to make the grant as lieutenant-governor, and did not intend to make it as subdelegate; that he did not know he was subdelegate, or that such officers had authority to make grants. The grant, therefore, professed to be founded upon his authority as lieutenant-governor, which did not exist. But the court *the* held, that inasmuch as Delassus had authority to make the grant, and did in fact make it, the grant should be confirmed. As in the *Clark* case, so in this case, the real inquiry was, whether Governor Delassus had power to make the grant.

In the case before us, the grant documents not only recite the authority of the State of Sonora, but it is expressly declared therein that the sale is made and consummated by the board of sales of the nation, and that

493 the sale was made for and on behalf of the nation.

In our opinion, therefore, the grant is within the spirit and logic of the cases above recited and that they are conclusive of the question involved.

It is argued that the language of the expediente, in connection with the oral testimony of a witness in the case, to the effect that the governor of the department had issued a proclamation declaring Sonora to be a State and no longer a department, shows that these officials were participating in a rebellion against the Government of Mexico, and made this grant while in such condition of rebellion. We can not think this a reasonable construction or a fair inference from the evidence. It is true they spoke of themselves as officers of the State, and recited State laws and described Sonora as being a State, but it is plain that whatever they thought of, or denominated their jurisdiction, they recognized the fact that it belonged to and was subject to the dominion of the “august Mexican nation.”

When we consider the particular circumstances by which they were confronted it is not surprising that they proceeded as they did in making the

sale in question. The change which had taken place in the relations between the State and the nation by a change to the central system had been but of short duration. The act of the Mexican Government  
494 creating this board of sales and empowering it to sell lands had taken effect but a short time previous. There was no act of the Supreme Government affirmatively and clearly annulling the prior legislation of the State. The officers of the State, after the change, were continued in the same capacity as officers of the nation in the department. They were situated many hundred miles across mountain ranges from the seat of government, with, to us, inconceivably slow means of communication with it. The fact that even now sincere men sincerely differ as to the legal method of making that sale affords ground for supposition that these officials may have been perplexed with uncertainty as to the legal course to pursue, and concluded, as we lawyer' say, "out of abundance of caution, to seize both horns of the dilemma and make the sale on behalf of both the nation and the State, and observe the requirements of the laws of both making it. There was nothing illegal or reprehensible in such a course and they certainly pursued it, and in doing so they can not be said to have been in rebellion or acting in opposition to the nation.

It is suggested that conceding the sale to have been made by the junta de almoneda for and on behalf of the nation, yet the sale is nevertheless void for the reason that it did not receive the approval of the Supreme Government prior to its consummation. To sustain this contention resort is  
495 had to the provisions of the regulations of July 20, 1831, and it is claimed that article' 126, 132, and 133 of that regulation were not repealed, but continued in force and limited the power of the board of sales created by the act of April 17, 1837.

By the custom of Mexican legislation, a law was repealed by the subsequent enactment of another one covering the same subject-matter. A law providing a system of regulations of proceedings on a given subject was considered to be displaced or repealed by a subsequent one providing regulations on the same subject to accomplish the same object, although the two did not conflict at all points.

In our opinion the provisions of the law of April 17, 1837, for the sales of land, were intended to and did supersede the regulations of July 21, 1837, as to making sales of land, although on some points they are not directly repugnant to each other.

The provision' of the regulations, 1831, in substance, were, the sales of land should be made at public auction at a meeting of the then existing junta de almoneda, conducted by the commissary-general, and that the property should be knocked down to the bidder who in the opinion of the majority of the voters of the board offered the greatest advantages to the treasury. When the property had been knocked down, a minute or report of the proceedings was to be made and transmitted directly to the  
496 Supreme Government, and the sale could not be carried into effect, that is, the proceedings remained in statu quo, until the approval of the Supreme Government was given.

It is to be borne in mind that this was in 1831, while the colonization laws were still in operation, and when no particular reason appears to have existed for the rapid conversion of the public domain into money. On April 17, 1837, the conditions had materially changed. The Govern-

ment had entered upon the policy of securing a great national loan and the issue of bonds and placing them on the European market and the issue of land script as a part of the general scheme. Under this policy it became necessary to rapidly convert the vacant lands, which were the principal source of revenue, into money to meet the accruing interest as well as the principal of this bonded debt. The slow and cumbersome methods of 1831 were not adequate to the changed condition of 1837. By the decree of April 17, 1837, a new system of administration was adopted. A supreme chief of the treasury for each department was created. A new board of sales was created in the departments. The person'al of the board was changed and elevated in character with a view, as we may suppose, to secure a degree of intelligence, trustworthiness and efficiency commensurate with greater responsibilities. This board was given confidential power to sell. It was required to keep minutes of its proceedings and a secretary of the board was provided. It was not required

497 to transmit its proceedings to the Supreme Government, but was required to transmit them to the superior chief of the treasury for the department. The superior chief was not required to transmit the record of these proceedings to the Supreme Government for its approval, but was required to transmit simply a report of the fact of the sale. If it had been the intention to require the transmission of this report for the purpose of securing the approval of the Supreme Government to the sale, how natural and how just it would have been to have said so, and not have left the purchaser to encounter the perils of a strained *ex post facto* construction, and uncertain inferences to be drawn from a critical comparison of the two laws.

The laws of April 17, 1837, provides a complete system for the sale of the public lands, materially different from the regulations of 1831.

In view of this, and the considerations which we have mentioned, we can not escape the conclusion that it was not the intention of the law to require an approval of the sale by the Supreme Government as a condition precedent to vesting an equitable title in the purchaser.

Under the principles established by our Supreme Court in many kindred cases, we think it is not our duty to take an electric light, a 498 microscope, and a tomahawk and explore the proceedings of the officials making these sales, in search of technical flaws or omissions for the purpose of slashing in pieces titles to these lands, upon the faith of which our own citizens have invested their fortunes in the attempt to render the lands fit for cultivation. On the contrary, we deem it our duty to give to these proceedings and the laws under which they were had a fair, reasonable, and liberal interpretation in favor of upholding titles issued by competent authority and upon the faith of which such large sums of money have been expended.

Lastly, it is contended that, 1853, Santa Anna, by a decree issued by him, annulled this title. To this proposition we answer: First, that no constitutional government in Christendom ever claimed the power to annul a title which had been issued upon a consideration and become vested, except for cause of fraud, and Santa Anna had no power to do by his mere *ipse dixit*; second, his decree only applied to titles which had been issued by the States, and not the titles which had been issued on behalf of

the national Government. And as we are of the opinion that the title in question here is to be regarded as of the latter class, we think it is not affected by the decree, even if Santa Anna had power to annul it.

499 EARL B. COE, PLAINTIFF,

vs.

THE UNITED STATES, DEFENDANT.

} El Paso de Los Algodones grant.

*Opinion.*

Mr. JUSTICE MURRAY delivered the dissenting opinion :

At a former trial of this cause the petition was dismissed, mainly upon the ground that, in the opinion of a majority of the court, the expediente of title offered in evidence was not genuine. A new trial was granted, and much additional evidence has been filed, and many laws and decrees of the Mexican Government have been for the first time brought to the attention of the court. There was much additional evidence taken by the petitioner to establish the genuin'ess of the title papers, and while there are many suspicious circumstances in connection with the making of the grant, and some evidence tending to show that the signature of the granting officer is a forgery, I am of the opinion that the preponderance of the evidence is in favor of the genuine'ss of the title papers.

It is claimed by the petitioner that on the 12th of April, 1838, the State of Sonora, Mexico, granted to one Senor Don Fernando Rodriguez five leagues of land at the confluence of the Gila and Colorado rivers, 500 then in the State of Sonora, now in the Territory of Arizona ; and that the title to said land was perfect at the date of signing the treaty between the United States and Mexico, known as the Gadsdon purchase, on the 30th of December, 1853.

The petitioner claims under mesue conveyances from Rodriguez to himself.

The petition is filed under the provisions of section eight (8) of the act of Congress approved March 3rd, 1891.

Counsel for the petitioner and the United States have argued this case with great ability, and have, by their untiring energy and research, greatly aided the court in the investigation of law arising on the record and the evidence filed in the cause.

It is claimed in the petition that at the date of making the grant to Rodriguez, Sonora was a free, independent, and sovereign State of the Republic of Mexico, possessing ample power under and by virtue of the decree of August 4, 1824, to sell and make valid title to the land in controversy. In fact, the whole theory of the case, as shown in the petition, is bottomed on the idea that said decree of August 4th gave the States of the Republic power to sell to Mexican citizens land within their respective demarcations, and that the colonization act of August 18, 1824, had no application to sales of lands by States to Mexican citizens.

501 This is a case of great importance, not only on account of the value of the property claimed, but also on account of the effect the decision of the question of law arising in this case may have on the rights of others who are claiming land under grants from the Mexican Government.

We are called upon to construe the laws of a foreign Government, in a foreign language, which laws consist not only of legislative enactments, but in circulars, orders and decrees of the official head of the Government issued from time to time. The difficulty of ascertaining what the laws of Mexico were at any given time is further increased by the fact that there are no reports of the decisions of the judicial tribunals of that country, and strange as it may appear the decision of all constitutional questions must be determined, if at all, by the Congress of the Republic.

In view of the difficulties suggested and the further fact that I am constrained to dissent from the opinion of the majority of my brother judges, who hold that the junta de almoneda (board of sale), who participated in the sale to Rodriguez, represented the Supreme Government, and that the action of said board in joining with the alleged State officers in making the grant was sufficient to take the title out of the Supreme Government and vest it in Rodriguez, the grantee, it is not without feelings of misgiving that I undertake to state what seems to me to be the law of the case.

I deem it unnecessary to examine at length the various changes in the form of the Mexican Government from the date of her independence to the date of this grant, or to discuss the rights and powers of the Government to control the sale of the public lands under the various changes of the Government for an empire to a republic, and from a republic to a supreme central system; nor do I think it necessary to inquire what rights or powers the provinces of the Empire had to the public lands in their respective demarcations prior to the formation of the Republic in 1824, or as to what rights to the public lands, if any, were granted to the States by the decree of August 4, 1824 (the act under which this grant is attempted to be made), for the reason that prior to the date of the grant to Rodriguez the form of the government had been changed from the federal system, adopted in 1824, to what as is known as the supreme central system. The following laws and decrees of the Government show that the functions of the various States under the federal system were entirely destroyed; in fact, the former States were extinguished, and therefore had no power to make a grant of land, or preform any other act whatever.

503 The decree of October 3rd, 1835 (Mexican Stats., vol. 3, p. 75), as follows:

"ART. 1. The governors who at present hold their offices in the States shall so continue, even when they have completed the terms previously established in their constitutions, but subject in their continuance and in the exercise of their functions to the Supreme Government of the nation.

"ART. 2. The legislatures shall discontinue at once the exercise of their legislative functions, but before dissolving and after calling together those that have adjourned, they shall appoint a departmental board, composed for the present of five individuals selected from their own body or out of it, to act as the council of the governor; in case this office is vacant, they shall propose to the Government such persons as have the qualifications which have been required heretofore; and, until the Government make an appointment, they shall preform the functions of government through the first one among the laymen named.

\* \* \* \* \*



"ART. 13. Until the attributes of the Government and departmental boards in what relates to the treasury are declared by law, said governors shall make no sales of lands or property, nor contracts not extraordinary expenses for said department, without the previous approval of the Supreme Government.

\* \* \* \* \*

"ART. 15. The Supreme General Government, through the secretary of the department of the treasury, shall act on the documents, consultations, and reports which it may receive from the governors, and shall remit the first to the general department of revenue or to the general treasury, according to the class to which they belong, for the proper uses, and in regard to the second, shall hear said offices, according to their special attributes, for the instruction and determination of said matters.

"ART. 16. The general department of revenues and the general treasury, through the minister of the treasury, shall communicate to the Supreme Government the opinions that result from the examination of the documents they receive, and shall make such explanations or rulings as are necessary, that the Supreme Government may make the proper orders and communicate them to the governors."

\* \* \* \* \*

Following this decree, the council of the Government called a special session of the Congress for the purpose, among other things, of changing the form of government and adopting a new constitution. (See Mex. Stats., vol. 3, p. 58.)

The basis of the new constitution of October 3, 1835, was agreed upon; the national independence and the national religion was established; the nation was divided into departments; the legislative authority vested in the departmental assemblies, subordinated to the general Congress of the nation. (See Mex. Stats., vol. 3, p. 89.)

The constitution of the new government was adopted on the 29th of December, 1836. (See Mex. Stats., vol. 3, p. 230.)

A law of Congress was passed on the 30th of December, 1836, to enforce the constitution of 1836, and to divide the territory into departments, the extinguished States, each constituted a department. After this time no mention is made of the States, by any department of the Government, until the year 1846, except as to past events.

In a circular from the department of the treasury, dated September 7, 1837, the former States are called "extinguished States." (See Mex. Stats., vol. 3, p. 429.)

The law of January 17, 1837 (see Mex. Stats., vol. 3, p. 260), created the national bank and created a mortgage to that bank of all the national lands in the territory of the Republic for the purpose of securing, and finally paying the national debt, therein secured.

Decree of the Supreme Government of January 30, 1837, provided for the carrying on the business of the national bank, etc.

So that it appears that prior to 1838 the Supreme Government was in possession and control of the entire territory of the Republic, and that the general laws were in force throughout the nation. Therefore, the laws and regulations of the former States in relation to the disposition of the public lands had passed away with the extinguished States.

When the form of the Mexican Government was changed from an empire to a constitutional Republic in 1824, the States were created by the central Government, and therefore possessed only such rights and powers as were conferred upon them by the constitutive act and the constitution. Sovereignty remained in the nation.

Article 3 of the organic law of 1824 is as follows :

"Sovereignty resides radically and essentially in the nation, and for that reason the right of adopt and establish through its representatives a form of Government and such other fundamental laws as appear to it most suitable for its preservation and greater prosperity, belongs exclusively to it, as well as the right of modify and change them as it believes most convenient." (See Decree, January 31, 1824, Mex. Stats., vol. 1, p. 693.)

So the nation had the power to abolish the States and change the form of government by consent of its representatives, which was done in 1835 and '36.

The proof shows that after the establishment of the new Government under the constitution of 1836, that Sonora was a department of the General Government ; that the laws of the General Government were enforced by the officers of the department of Sonora until about the first of January, 1838, when the governor and the other departmental officers concluded to disregard the constitution and laws creating the new system of government, and to go back to the federal system, as adopted in 1824 ; in other words, the governor and other officials of the department went into open rebellion against the National Government, and claimed all their rights and powers under the constitution and laws which were in force during the existence of the Government under the federal system, and the laws of the extinguished State of Sonora. Hence it is that the right to make the grant in question is claimed by virtue of the law of August 4, 1824, and the laws which had been passed by the State of Sonora.

It is quite clear that in attempting to make the grant in question the laws and regulations in force in the departments of the General Government were entirely ignored. The officers attempting to make the grant had no doubt been regular officials in the department of Sonora, but an examination of the expediente of title clearly shows that the intention of the officers was to represent the State in making the grant and not the department.

The following extracts from the various papers constituting the expediente of title conclusively show that fact :

507 "To Jose Justo Milla, proprietary auditor of the general treasury of the free, independent, and sovereign State of Sonora, encharged with said office by the laws. Whereas, article 2 of the sovereign general decree, number seventy, of the 4th of August, 1824, conceded to the States the revenues, &c."

\* \* \* \* \*

In consequence of which the honorable constituent Congress of Sonora and Sinaloa passed law number 30 on the 20th of May, 1825.

\* \* \* \* \*

Which dispositions have been embodied in sections 3, 4, 5, 6, & 7, chapter 9, of the organic law of the treasury number 26 of the 11 of July, 1834.

\* \* \* \* \*

This expediente having been concluded and no purchaser appearing at the thirty offers of sale of said lands, let the expediente be transmitted to the treasurer-general of the State that the final proceedings be taken in relation thereto.

\* \* \* \* \*

On the same day this expediente was by me delivered to senor treasurer-general of the State, in witness whereof I sign with rubric.

Arispe, April 7th, 1838.

To the promotor fiscal of the treasury.

(Signed) Milla,

Senor treasurer-general of the State.

\* \* \* \* \*

Whereupon, in view of these facts, it is most just that the Senor Don Fernando Rodriguez be admitted to composition with the treasury of this sovereign State for said vacant lands, &c.

\* \* \* \* \*

At the city of Arispe, 8 of April, 1838. The senores composing the junta de almonedas (board of sale) having met, these gentlemen being the senor treasurer-general of the State, by the ministry of the law, the comptroller, one Jose Justo Milla, the judge of the first instance of this district, Don Francisco Mendoza, and the administrator of the revenues of this city, Don Jose Carrillo, for the purpose of celebrating the first almoneda referred to in this expediente, whereupon at the sound of the bell many individuals assembled in the office of the treasurer-general, and the auctioneer, Florencio Baldizan, said in a loud, clear, voice: "There will be sold on account of the public treasury of the State five leagues of land, &c."

\* \* \* \* \*

Jose Justo Milla, propriatory auditor and treasurer-general of the state of Sonora, &c.

\* \* \* \* \*

508 Wherefore, in the exercise of the faculties conceded to me by the laws, decrees, and regulations and the superior existing orders relating to lands, by these presents and in the name of the free, independent, and sovereign State of Sonora, as well also of that of the august Mexican nation, I constitute and confer in due form of law to Senor Don Fernando Rodriguez, resident of Hermosillo, five leagues of land, &c.

\* \* \* \* \*

Jose Maria Mendoza, provisional commissary-general of the State of Sonora, &c., certify, &c.

\* \* \* \* \*

Supreme Government of the free State (of Sonora).

This supreme authority approved the title which your honor has issued on yesterday, in favor of Senor Don Fernando Rodriguez, a resident of Hermosillo, for five leagues of lands in front of the confluence of the rivers

Gila and Colorado, and the Paso of los Algodones, on the noethern frontier of this State. I say this to you in reply to your note of yesterday, reinterating the considerations of my regard, God and liberty.

Arispe, April 13, 1838.

(Signed)

LEONARDO ESCALANTE.

To the treasurer-general of the State.

\* \* \* \* \*  
The petition of Rodriguez was addressed to the officers of the State of Sonora, and every officer that had anything to do with this expediente of title claimed to be an officer of the State of Sonora.

The junta de almoneda (board of sale) claimed to be officers of the State and acted for the State. The grant is made in the name of the "free, independant, and sovereign State of Sonora as well as of the august Mexican nation." The granting officers evidently meant the "august Mexican nation," that existed under the federal system in 1824, as contradistinguished from the supreme central system that was in existence at that time. The grant is approved by Leonardo Escalante, who calimed to be governor of the State.

It is insisted, however, that the officers composing the junta de almonedas were, in point of fact, officers of the department of Sonora, and that they had power, by virtue of the laws of the general Government in force at that time, to transfer the Government's interest in the land to Rodriguez. Some of the officers participating in the sale had doubtless constituted the junta de almoneda of the department, prior to the time that they with others went into rebellion against the General Government; but, as the expediente of title shows, they, at the time of making this grant, in addition to their functions as officers of the board of sale, were acting as the chief officers of the so-called State of Sonora, and therefore active participants in the attempt to reestablish the State, in violation of the laws in existance at the time.

The junta de almoneda making the sale was composed of the Senor treasurer-general of the State; the comptroller, Jose Justo Milla, judge of the first instance of the district; Don Francisco Mendoza; and Don Jose Carrillo, all of whom claimed to be officers of the State and not of the department. They caused to be made the following announcement: "There will be sold on account of the public treasury of the State, five leagues of land, &c."

It will be seen from the foregoing recitals that the case of U. S. v. Clark, 8 Peters, p. 436, and the case of Chouteau v. U. S., 9 Peters, p. 137, have no application to the facts in this case. The principles decided in both cases are the same. In the case of Clark v. U. S., Lieutenant-Governor Coppinger made a grant to Clark and recited in it as authority the royal order of 9th of October, 1790. The court held that the royal order did not confer authority to make the grant, but that it appeared from a proper construction of the grant documents that the lieutenant-governor had authority to make the grant independent of the royal order and sustained the grant. There is no recital in the grant papers in this case showing anything like a valid authority in the officers to make the grant. There can certainly be no presumption that they were attempting to exercise their functions as officers of the department of the Supreme Govern-

ment, for it affirmatively appears on the face of the expediente that whatever they did in relation to this matter was done not as officers of the Supreme Government, but as officers of the extinguished State of Sonora.

But if I am mistaken in this position an examination of the following laws show' conclusively that the junta de almoneda, as shown by the expediente in this case, failed to comply with the provisions of the  
 511 law in force at the time regulating the duties and powers of the junta de almoneda in relation to the sale of the public lands belonging to the Supreme Government.

The colonization law of August 18, 1824 (White's Recop., vol. , p. ), was in force until the decree of April 4, 1837 (vol. 3, Mex. Stats., p. 352), which is as follows :

"The Government, in accord with the council, shall proceed to make effective the colonization of the lands that are or should be the property of the Republic by sales, leases (enfiteusis), or mortgages, and shall apply the proceeds (which in the first case shall not be less than \$1.25 per acres) to the payment of the national debt, already contracted or which shall hereafter be contracted, always reserving enough to meet its obligations to the soldiers who took part in the war of independance, and for the remunerations and gifts Congress may grant to Indian tribes and nations, and those who assisted in the restoration of Texas, and it shall not be compromised by the laws ebacted heretofore on colonization, which enactments are all repealed in so far as they conflict with this law."

The decree of August 4, 1824 (Mex. Stats., vol. 1, p. 710), was in force in 1838, in so far as it had not been repealed or modified by subsequent legislation.

The law of January 26, 1831 (Mex. Stats., vol. 2, p. 308), is as follows :

"ART 1. A general department of revenue is established under whose control shall be all the branches of the exchequer, which are administered for the federation, except the general administration of the mail and that of the mint.

\* \* \* \* \*

"ART. 3. The general director and the auditors shall be appointed by the Government, in conformity with clause 6th of art. 110 of the constitution. The other employees shall likewise be appointed by the Government, on nomination by the director and with the approval of the corresponding auditor.

"ART. 4. The general department shall be divided into three sections, under whose charge shall be the different branches of the treasury,  
 512 and the benefit fund of ministers and officers as the regulations may provide. Each auditor shall be chief of a section.

\* \* \* \* \*

"ART. 12. The commissaries-general shall continue to receive the revenues which are not under the control of the departments, but with regard to those which are they shall receive only their net products, and shall have no other control in their administration than that of making cash statements and watching over the conduct of employees, and shall inform the department of whatever abuse they observe, and shall fill the commissions or duties the department may assign them.

"ART. 13. The proceeds from the national property shall be collected by commissioners under the immediate direction of the general department.

\* \* \* \* \*

"ART. 22. This decree shall not go into effect until these that regulate the general treasury and the commissaries are promulgated."

Circular of 7th of July, 1831, department of the treasury, page 341, is as follows :

"ART. 1. In accordance with the provisions of article 4, of the law of January 26, of the current year, which establishes the general department, this latter is divided into three sections, under whose charge shall be the different branches of the treasury, which are administered for the federation and the benefit fund of ministers and officers, in the following terms :

"The first section, of which is chief the first auditor.

"Tobacco as stated in its place.

"Powder in whatever relates to its management.

"Sealed paper for the consumption of the district and territories and the tribunals and officers of the federation.

"National property, in which is included, under article 9 of the law of August 4, 1824, those of the inquisition and temporalities and all other country or town lands belonging to the federation.

"Second section, of which is chief the second auditor.

"All branches whose administration is entrusted to the marine and frontier custom-houses, those of the federal district and territories, and weighing duties.

"Third section, of which is chief the third auditor.

"Lotteries.

"Salt deposits.

"Benefit fund of ministers and officers, indifferent and extraordinary.

513 "ART. 2. The branches of the treasury referred to which are administered for the federation being under the management of the director general, everything pertaining to the management and economy thereof are within his attributes, as chief of said revenues and of the employees who administer them.

\* \* \* \* \*

"ART. 10. The general department shall take an exact account of the number, location, value, condition, and present method of administration of all the property and lands of the nation, in which are included those of the inquisition and temporalities and all others that belong to the public exchequer, in accordance with said law of August 4, 1824. It shall see to the thorough collection of the products, as provided in that particular in the law of January 26th last, and in other laws on the matter now in force, procuring the best arrangement, increase of returns, and best possible economy in the expenses; and it shall do whatever it considers most beneficial in regard to the sale, lease, or other means of administration that may be advisable, in whole or in part, of the property in question."



The regulation of July 20, 1831 (Mex. Stats., vol. 2, p. 351), in so far as it relates to the revenues of the Government and the duties of the revenue officers, is as follows :

"ART. 73. The commissariats-general, within their respective demarcations shall collect all the net products of revenue under the care of the general directory, and they shall be the proper custodians of funds that stand unappropriated for any purpose. It is their duty likewise to collect all other revenues from all sources else ; for which purpose authority is given them to incur whatever expenses may be necessary ; said collections they shall distribute into the several funds of the union according to their uses. They shall also supervise the balancing of the cash books in the Government offices and general depots, whenever that balancing shall have to be done. They shall be the proper supervisors and guardians of the treasury depots ; and it is their duty to watch that all employees in the same do their duty faithfully and well. In the matter of bridges, canals, and common roads they shall exercise such authority as is given, or that shall be in future given to them by law. Finally, it devolves upon them to do whatever else is entrusted to them by the Government relative to the finances of the nation ; likewise as to matters entrusted to them by the general directory relative to its collecting offices, and they shall perform all other duties that may be assigned to them by law.

\* \* \* \* \*

514 "ART. 84. The commissaries-general shall keep every year a journal that has been paged and signed, with their rubrics, by them and by the auditors. Their duty shall be to keep in said journal a record of the day on which supreme orders were received by them from the Government, or from the general treasury, or from the general directory of the revenues ; they shall also keep a record therein of all instructions issued to subalterns and of the date of the issuing as well as of the date of the answers they shall get to the same ; in affairs of the suspension of expenditures or the making of collections, etc., they shall be careful to explicitly demand the said answers. The date of the receipt of the said answer shall be written on the left margin, sufficient space for which is to be left on each page of said book. Orders that refer to the collection and distribution of funds after being recorded in said journal shall be delivered in their originals for their execution to the treasury auditors, who by virtue thereof shall sign all proper papers, and the commissaries will see that said orders are complied with. The decrees and laws bearing on these particulars will also be delivered therewith to the auditors.

\* \* \* \* \*

"ART. 126. All sales, purchases, and contracts done for the benefit of the public finance department, whatever their object may be, shall be entered into by the commissaries-general at auction-sales meetings (junta de almoneda). But in order to have such meetings called it is necessary that they should have previously received the proper order therefor given either by the Supreme Government and directly communicated to them, or indirectly through the treasurer-general, or from the directory of the revenues, whenever the order has reference to matters of its own supervision.

"ART. 127. Said meetings shall be held in the apartments of the commissariats, be it suited to the purpose, or at the public place more immediately adjoining said offices, and the commissary or subcommissary who presides at them shall be a regular member thereof, as well as the oldest auditor of the treasury or his deputy, and also the public procurator, wherever such may be; each one of these officers shall take their seats in the order in which they are named.

"ART. 128. Besides these regular members there shall also be special members, as the nature of the sale, purchase, or contract may be, for whenever in the federal district officers of said revenue for the general directory are the subject for consideration, then the auditor in charge of said office or revenue shall attend the meeting in the character of a special member; if said offices or revenues belong to any other department, then the  
515 chief clerk of the section of accounts of finances shall attend. In army matters an officer appointed by the proper inspector shall attend, and in matters concerning shops and buildings under the contract of the artillery department their chief officer shall attend. In matters of hospitals, one of the first adjutants of the medical board; and in matters of fortifications and officers of the board of engineers. Lastly, upon matters having reference to any other thing than these mentioned, the employee better acquainted with such matters, and who shall be appointed by the commissary-general, shall attend, he (the commissary-general) taking care to give notice to both the regular and special members of the day and hour for the auction to take place, which will be ordinarily at ten o'clock in the morning. When the military officers or the auditors of the general directory and the chief clerk of the section of accounts of finance shall be present in the character of special members they shall take their seats after the commissary-general.

"ART. 129. In the commissariats and subcommissariats outside of the federal district, whenever matters of revenue come up before the meeting, the head officer thereof shall be present as a special member, if he happens to have his residence there. So as to persons spoken of in the foregoing article, or, in their absence, their clerks, when matters of their charge are to be transacted. In contracts relative to the army, the commissary or subcommissary shall give notice to the proper officers, that they may appoint an officer, and in his absence or inability a substitute to attend the meeting.

"ART. 130. If there happens to be a notary at the place he shall be in attendance of said auction-sale meeting without failing, and with him, or if there should be no notary, then with two attending witnesses. All matters transacted at the meeting shall be certified to.

"ART. 131. But in order to hold such meetings it is necessary that the sales or purchases to be made must be announced to the public at least eight days before, by means of placards to be pasted at prominent and conspicuous places, having their contents published also in newspapers having the largest circulation, if there be any such papers in the place, the commissaries being careful that in said notices both the more essential circumstances and the necessary instructions pertaining to the matter be inserted.

"ART. 132. Once that the meeting shall be opened, and the corresponding proclamations made by the public crier, bids legally made shall be admitted until the closing day of the sale, when it shall be declared  
516 in favor of the highest bidder, by a majority of the meeting. This act, together with whatever else took place at the auction sale, will be placed on record in a book kept by the commissaries or subcommissaries for that purpose. All the members signing therein, together with the attending witnesses, or with a notary, who (the notary) shall moreover write the other deeds connected with the transaction. In case there be no notary in the place, then a clerk brought for the purpose by the commissary-general shall reduce to record the act and decision of the meeting.

"ART. 133. When the term prescribed by law expires the commissaries or subcommissaries shall send the expediente, together with an accompanying report, to the Supreme Government, without whose approval the sale, purchase, or contract can not be carried into effect.

"ART. 134. When it appears that any one of the members of the auction meeting, by himself or through another person, bought or sold at the auction sale for his own use, then the sale shall be null and he shall be punished by the infliction of such penalties as the law imposes on like transgressors."

The law of September 20th, 1836 (Mex. Stats., vol. 3, p. 194), is as follows:

"The Government is authorized to make all the provision it may deem necessary for the regulation of the general system of the treasury of the Republic, until the organic law on the matter is promulgated, but it shall not be understood for that reason that it has power to levy taxes or to increase those already established."

Decree of April 17, 1837 (Mex. Stats., vol. 3, p. 363), is as follows:

"ART. 1. Until the general Congress establishes the revenues which are to form the national exchequer in all the Republic of Mexico the revenues, taxes, and property of which the Supreme Government is in possession shall continue, and the revenues, taxes, and property which the department established or acquired under the federal system and which existed at the time of the publication of the decree of Oct. 3rd, 1835.

"ART. 2. The revenues, taxes, and property which by the law of 17th of last January were assigned to the national bank are excepted from the provisions of the last article until it fulfills its object.

\* \* \* \* \*

517 "ART. 4. Superior chiefs of the treasury shall be located in each department, with powers designated in this decree. All the employees of the treasury in their respective districts, in the instances and manner which shall be designated, shall be subordinated to them.

"ART. 5. The administration and management of the public funds are divided into offices for collection and offices for distribution. The first shall collect the duties that form the exchequer, and shall be charged with the safekeeping, increase, and collection of whatever said duties produce; the second shall be entrusted with the inversion of the national funds in the different purposes of a public administration; the former shall be denominated administrations of revenues and the latter departmental treasuries.

"ART. 6. The administration of revenue shall be divided into principal and subordinate.

\* \* \* \* \*

"ART. 73. All the purchases and sales that are offered on account of the treasury and exceed five hundred dollars shall be made necessarily (precisamente) by the board of sales, which, in the capitals of each department, shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the attorney-general of the treasury, and the auditor of the treasury, who shall act as secretary. Its minutes shall be spread on a book which shall be kept for the purpose and shall be signed by all the members of the board, and a copy thereof shall be transmitted to the superior chief of the treasury for such purposes as may be necessary and to enable him to make a report to the Supreme Government.

"ART. 74. The superior chiefs shall hold meetings of the board of the treasury at least twice a month and when they consider it necessary, according to the difficulty and gravity of the business. These boards shall be composed of said chief, the departmental treasurer, the attorney-general of the treasury, the principal collector of the revenues, and the auditor of the treasury, who shall act as secretary thereof.

\* \* \* \* \*

"ART. 76. The minutes of the board shall be spread on the proper book, which shall be signed by all the members thereof, and an authenticated copy transmitted to the superior chief of the treasury, to enable him to make a report to the Supreme Government when the case requires it."

\* \* \* \* \*

Article 92 of the law of April 17, 1837, is as follows:

518 "The powers that by various laws are given to the commissaries general and subcommissaries shall be exercised in future by the superior chiefs of hacienda and their subalterns in so far as they do not conflict with this decree, for in that respect all existing laws stand repealed." (Arriallaga, Recop., p. 330.)

An examination of the existing laws, not in conflict with the decree of April 17, 1837, gives us a complete system of collecting the revenues of the Government; the duties of the commissaries general and subcommissaries are clearly defined. The commissary-general is to keep the proper books and to cause the auditors to keep proper books, and orders received from the Supreme Government, or any department thereof, are to be noted and a memoranda made of the date received, &c.; and the purchase, sale, or contract made on account of the treasury, whatever be their purpose, are to be made by the commissaries general of the board of sale; but before convening them it was necessary to receive proper orders either from the Supreme Government, communicated directly or through the general treasury, or from the general department when relating to the branches subject to it.

The time and place of the meeting of the board of sale is provided for, the officers allowed to vote specified. Then follows art. 131, 132 and 133 of said regulation of July 20, 1831.

The nation having contracted a debt and being unable to meet it  
519 from the revenues collected under existing laws, the law of April 4, 1837, was passed, which repealed, to a great extent, the coloni-

zation law of August 18, 1824, and provided that the lands belonging to the Republic should be sold for not less than \$1.25 per acre and the proceeds applied to the payment of the national debt. This law also authorized the creation of a mortgage on the property belonging to the Government to raise money to pay off the national debt. Art. 73 of said law created officers in the various departments called superior chiefs of the treasury, and provided for a board of sale at the capitals, and also provided that they should consist of the superior chief of the treasury, first alcalde, attorney-general, and auditor of the treasury, and further provided that all sales offered on account of the treasury that exceeded \$500 should be made by the board of sale. Art. 92, as we have seen, made it the duty of the chief of the treasury and his subordinates to discharge all duties which had devolved on the commissaries general and subcommissaries by former laws.

It is a well-recognized rule of construction that all statutes on the same subject must be construed together. When this rule is applied to the various statutes and decrees in relation to the sale of public lands which were in force on the 12th of April, 1838, it is quite clear that the junta de almoneda had no power whatever to sell and convey the public lands of the Government, so as to vest the purchaser with the title, unless  
520 the sale was first approved by the General Government.

The law required proposed sales to be advertised by posters at least eight days and by publication in a newspaper; the minimum price at which the land could be sold was \$1.25 per acre; all sales made on account of the treasury, whatever was their purpose, must be made by the board of sale, but before making it it was necessary to receive the proper orders from the Supreme Government, and without the approval of the Supreme Government no sale or contract had any effect.

The junta de almoneda in the sale to Rodriguez did not pretend to comply with any of these requirements; on the contrary, it appears on the face of the title papers that their intention was to disregard the law of the Supreme Government in every respect. The land was not sold for \$1.25 per acre, as provided in the law of April 4th, 1837, nor advertised for eight days, as required; but, on the contrary, twenty-five thousand acres of land was advertised for three days and sold for the sum of \$400, and if the money was paid at all it was paid into the treasury of the extinguished State of Sonora.

All the laws and regulations passed by the National Government in relation to the sale of the public lands in the departments during the existence of the States applied to the departments created after the States were extinguished.

521 It is insisted by the counsel that Sonora, if not a State at the time of making this grant, was, at least, a State de facto, and that as such all grants by it must be recognized by the General Government. If this was true the court should not confirm the grant, unless it should affirmatively appear that it had been approved by the Supreme Government, as the laws in force at that time declared all grants by the States void unless they were approved by the Supreme Government.

The decree of November 25, 1853 (Mex. Stats., vol. 6, p. 766), is as follows :

"Department of the interior. His excellency, the President of the Republic, has been pleased to direct to me the following decree :

"Antonio Lopez de Santa Anna, etc. : Know ye, that by virtue of the powers the nation has seen fit to confer on me, I have decided to decree the following :

"ART. 1. It is declared that the public lands, as the exclusive property of the nation, could never have been alienated under any title by virtue of decrees, orders, or dispositions of the legislatures, governors, or special authorities of the States or territories of the Republic.

"2. Consequently, it is declared that the sales, cessions, or any other kind of alienations of said public lands which have been made without the express order or sanction of the General Government, in the manner prescribed by the laws, are null and of no value or effect.

"3. The functionaries, authorities, and employees, to whom corresponds the execution of this decree, shall proceed as soon as they receive it to recover and to take possession in the same of the nation, of lands comprehended in the provisions of art. 1, and which may be found in the possession of corporations or private individuals, whatever be their prerogatives or category.

"4. No claims of any kind, whatsoever, or petitions whose purpose is to obtain indemnifications from the public treasury for the damages which the holders or unlawful owners may allege, by virtue of the provisions of the proceeding articles, shall be admitted by the judicial, civil, or administrative authorities, the latter reserving only their right against those persons from whom they had the lands they are compelled to return."

This decree was in full force and effect at the date of signing the treaty between Mexico and the United States, on the 30th of December, 1853.

The petitioner's rights in this case depend on the rights which he had under the laws of Mexico in force at the date of the transfer of the property to the United States under the treaty. No subsequent act or decree of the Mexican Government could, in any way, affect the rights of the United States or the rights of the petitioner.

It is insisted by counsel for petitioner that Santa Anna was a usurper and that his decrees were declared void by the Mexican Government after he was deposed. This could not affect the rights of the parties which attached under the laws in force at the date of signing the treaty. Santa Anna was the acknowledged head of the Mexican Republic at the date of the decree, and was so recognized by the Mexican Government and the United States as well. He was the President of the Republic at the date of the purchase of the property by the United States from the Mexican Government, and had power to make the decree and to enforce it throughout the Republic. It is, therefore, just as binding on this Government and the petitioner as though it had been an act of Congress of the Mexican Republic. It fixed the property rights of the citizens of Mexico and the rights of the United States at the date of signing the treaty, which was ratified and proclaimed by this Government June 30, 1854.



It is a well-recognized principle of international law, as laid down by Mr. Wheaton, in section 31 of Wheaton's International Law, that "where a foreign government and their subjects treat with the actual head of the state, or the government de facto recognized by the acquiescence of the nation for the acquisition of any portion of the public domain or of private confiscated property, the acts of such government must, on principle, be considered valid by the lawful sovereign on his restoration, although they were the acts of him who is considered by the restored sovereign as an usurper."

It is further insisted by counsel that the correspondence between some of the officers of the State of Sonora and the General Government, as shown by certain letters attached to the expediente of title, would authorize the court to presume that the sale in this case had been ratified and approved by the General Government.

One of the letters referred to is written by Jose Maria Mendoza, who was at the time provisional commissary-general of the State, and it is addressed to the treasurer-general of the State. From this letter it appears that Rodriguez in 1847 presented his title papers to Mendoza, to the end that the same might be transmitted to the President of the Republic, but for what purpose does not appear. This letter is dated January 5th, 1847.

524 There are other letters dated in 1838, 1840, and 1841, which I deem unnecessary to notice, further than to say, from the language used in some of them, it might be inferred that the land in controversy was included with other lands mortgaged to the national bank. The last letter in relation to the grant to Rodriguez is dated on the 15th of January, 1858, and is signed by Jose Maria Mendoza and Florencia Trejo. This seems to have been written at the request of Rodriguez and contains the information that the original expediente of title had been found in the archives pertaining to the treasury department, and had been transmitted to the Supreme Government of the State.

Taking all the correspondence together, it negatives any presumption that the grant was approved by the Supreme Government; but if it did not, the expediente shows that the officers who executed it were at the time actively engaged in rebellion against the lawfully constituted authorities of the Government, and therefore no presumptions will be indulged in by the court which would deprive the lawful Government of any rights of property which they assumed to dispose of.

I agree with a majority of the court, that "it is not the duty of the court to take an election light, a microscope, and a tomahawk, and explore the proceedings of officials making these grants in search of technical flaws or omissions for purpose of slashing to pieces titles to these lands, upon the faith of which our own citizens have invested their fortunes in the attempt to render the land fit for cultivation." But I do not think it requires an electric light, nor a microscope to see that the objections made to the confirmation of this grant are not technical. Individual cases of hardship may occur in the administration of the law, but that does not justify the court in confirming a void grant.

I am satisfied that the petitioner bought the land in good faith and has expended in improvements on it a large amount of money, but that does

not change the law of the case; he claims under a grant to Rodriguez from the State of Sonora, and stands on no higher ground than the grantee would if he was before the court asking a confirmation of this title.

The petitioner has neither legal nor equitable title and his petition should be dismissed.

In the foregoing opinion of Associate Justice Murray I concur.

THOMAS C. FULLER,

*Associate Justice, Court of Private Land Claims.*

I certify that the foregoing laws and decrees from the statutes of Mexico are correctly translated.

EUSEBIO CHACON,

*Official Translator, Court of Private Land Claims.*

(Indorsed on cover:) Case No. 15430. Term No. 591. The United States, appellants, vs. Earl B. Coe. Court of private land claims. Filed Oct. 21, 1893.

N<sup>o</sup>. 8. of 1897.

Stipulation to submit

Office Supreme Court U. S.

FILED

DEC 5 1898

JAMES H. MCKENNEY,  
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Dec. 5, 1898.

N<sup>o</sup>. 8.

THE UNITED STATES, APPELLANT,

vs.

EARL B. COE.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

**ON PETITION FOR REHEARING.**

STIPULATION.

It is hereby stipulated by and between the attorneys for the respective parties above named that this case shall be re-submitted to the Supreme Court of the United States upon the briefs already on file therein, including the petition for rehearing and brief in support thereof.

MATT. G. REYNOLDS,

*Special Assistant to the Attorney General.*

A. M. STEVENSON,

*Of Counsel for Earl B. Coe.*

NOVEMBER 30TH, 1898.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES.

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THE UNITED STATES,  
*Appellant,*  
VS.  
EARL B. COE,  
*Appellee.*

---

*Appeal from the  
Court of Private  
Land Claims.*

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PETITION FOR REHEARING.

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(a) Showing Interest of Petitioner.

Now comes the Denver Savings Bank, trustee, and by leave of court first had and obtained, presents this, its petition, and respectfully shows unto this honorable court: That it is a corporation organized and existing under the laws of the state of Colorado, and is now, and ever since the year 1890, has been, doing business in the city of Denver, in said state of Colorado.

That, under its articles of incorporation or charter, it is authorized and empowered "to accept any

trust which may be created by instruments in writing appointing said bank trustee for any lawful purpose, and to act as such trustee in all matters embraced in or pertaining to such trust."

That, under and by virtue of a deed of trust executed by the appellee herein, Earl B. Coe, bearing date March fifteenth, A. D. 1893, acknowledged the same day and recorded March twenty-fourth, 1893, in the office of the recorder of deeds in Yuma county, Arizona, in book P of said records, at pages 384 et seq., your petitioner, the Denver Savings Bank, became and ever since has been the trustee in said deed of trust for the holders of one hundred and fifty thousand dollars of mortgage bonds therein mentioned and described, and secured upon the lands and premises therein described, which lands and premises embrace the larger portion of the Rancho El Paso de Los Algodones involved in the controversy herein.

That, as such trustee, your petitioner represents the holders of such bonds, who are too numerous to mention, and whose names and residences to your petitioner are in part unknown.

Your petitioner further states that such deed of trust, and such trusteeship was accepted by it on said fifteenth day of March, 1893, after the date of the final decree herein by the Court of Private Land Claims, and before any appeal had been taken by the appellant herein; that it caused the titles to such lands to be examined, and report was made to it and to those contemplating the purchase of such bonds, that said Court of Private Land Claims had passed upon the titles to said Rancho El Paso de Los Algodones, and had found that the same were

valid in the appellee, Earl B. Coe, and that the sale thereof had been affirmed by the board of sales created by the Mexican national government, and the title thereto affirmed by such government, and never questioned.

That it found as a matter of fact that the appellee, Earl B. Coe, was in possession of said rancho, and had made large and valuable improvements thereon. That, on the strength of such decree and such possession, your petitioner became such trustee, and, itself invested its funds in a portion of such bonds so secured by said deed of trust.

That it is informed and believes that all of such bonds, to the amount of one hundred and fifty thousand dollars, are now outstanding and held by various parties scattered over the United States who have paid par therefor upon the strength of such security and in good faith, and your petitioner as such trustee files this petition on their behalf as it is empowered to do by the terms of such mortgage or deed of trust, to protect their interests in such lands and premises; that hitherto it has entrusted the management of this controversy to the appellee, and relied firmly upon the decree of said Court of Private Land Claims, but it is now informed by the holders of said bonds secured by said deed of trust residing in the Eastern states who have kept informed upon the subject, that the opinion in this court was prepared and written by the late attorney general, who, as the head of the department of justice, in the line of his duties, had charge of the employment of and directed his assistant in the management of this case in this court, and such bondholders request your petitioner to respectfully urge this honorable court,



for that reason, to withdraw its opinion heretofore filed herein, and grant a rehearing and reargument thereof.

All of which is respectfully submitted.

AMOS STECK,

Attorney for Petitioner.

Denver, Colorado.

MESSRS. CARPENTER & McBIRD,

Of Counsel

State of Colorado, County of Arapahoe, ss.

George R. Swallow, being duly sworn, says that he is the president of the Denver Savings Bank, the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true as to all things of his own knowledge, excepting as to such things as are therein stated upon information and belief, and as to such matters he believes it to be true.

GEORGE R. SWALLOW.

Subscribed and sworn to before me this 21st day of June, A. D. 1898. My commission expires May 10, 1901.

CARLOS WOOD,

Notary Public.

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(b) Grounds for Rehearing:

Your petitioner named in the above and foregoing petition the Denver Savings Bank, by its counsel, leave of court having been first had and obtained, and its interest in this controversy having been shown in said petition, respectfully prays this honorable

court to withdraw the opinion heretofore filed herein, and grant a rehearing and reargument in said cause, for the following reasons, viz.:

First—For the reason that the late attorney general, who had general supervision of this case, participated in the hearing and determination thereof.

Second—In the statement of the case it is found that “the board of sale consisted of certain officers, among whom was the treasurer general. The powers of the board with reference to the sale of public lands were conferred and defined by the laws of the Central Mexican government.” This honorable court erred in holding that the grant was from the state of Sonora alone.

Third—This honorable court erred in holding that the states or departments surrendered their power of disposition of the public lands by virtue of the Constitution of 1836.

Fourth—This honorable court erred in holding that the source of appellee’s title was not the Central Mexican government.

Fifth—This honorable court erred in holding that the board of sales did not comply with the laws of the Mexican central government in the sale of these lands.

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#### BRIEF AND ARGUMENT.

We deem it unnecessary to present any brief or argument in support of the first ground for rehearing. The mere suggestion would seem to be sufficient reason for the rehearing and reargument of the case.

As to the other grounds assigned for rehearing, we can add nothing to the argument of counsel for the appellee.

AMOS STECK,  
Attorney for Petitioner.

MESSRS. CARPENTER & McBIRD,  
Of Counsel.

We hereby certify that, in our opinion, the foregoing petition is well founded in law.

AMOS STECK,  
Attorney for Petitioner.  
CARPENTER & McBIRD,  
Of Counsel.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES.

---

THE UNITED STATES,  
*Appellant,*

vs.

EARL B. COE,  
*Appellee.*

*Appeal from the  
Court of Private  
Land Claims.*

---

PETITION FOR REHEARING.

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Now comes Earl B. Coe, appellee in the above entitled action, by his counsel, leave of court having been first had and obtained, and respectfully prays this honorable court to withdraw the opinion heretofore and on the 23d day of May, A. D. 1898, filed herein, and grant a rehearing and reargument in said cause, and for grounds therefor respectfully represents:

First—That this learned court erred in stating in said opinion the source from which the appellee claimed title to the land involved in this controversy, in this: The opinion, after quoting the original petition (page 2), says:

“The source of the title is therefore alleged to be in the state of Sonora and the basis of its authority is explicitly given.”

And, again, on the same page, this language is used:

“The allegation or claim, then, is a grant from the state of Sonora. There is no claim of a grant from the Mexican government.”

In this the learned court overlooked the claim of the petitioner that his title was from both the Mexican nation and the state of Sonora.

Second—The learned court erred in holding that the states or departments surrendered their rights in and power of disposition of the public lands by virtue of the Constitution of 1836.

Third—The learned court erred in holding that the appellee did not have title from the Mexican nation, and that the laws of the nation were not complied with by the board of sales (Junta de Almondes) in making the sale to Rodriguez.

Fourth—The learned court erred in the statement that it was conceded that the state of Sonora was in rebellion against the Mexican nation and declaring its independence of that nation at the time title was issued to Rodriguez.

### BRIEF AND ARGUMENT.

First—Upon the proposition that appellee claimed title from both the nation and state:

The statement of the learned court:

“The allegation or claim, then, is a grant from the state of Sonora. There is no claim of a grant from the Mexican nation.”

Is based on the petition as originally filed, and it is more the fault of counsel who writes this petition for rehearing (Mr. Stevenson) than of the honorable court that this error is made. The facts are, I was not of counsel until after the first trial in the Court of Private Land Claims and did not prepare the original petition. It was the first petition filed in that court. The practice was new, and the investigation since made by court and counsel has at least demonstrated that it was most difficult to determine the true state of affairs with reference to these land titles, and I am persuaded that counsel who filed the original petition did even better than the counsel who has since had active charge of the case would have done at that time. It is true that the original petition in terms only claimed the title from the state of Sonora. It was, however, stipulated and agreed between counsel for the government and the claimant that the petition should be considered as amended, so as to claim title both from the nation and state. This stipulation, which in fact contained the amendment, was made at Tucson, Arizona, in February, 1893. The clerk of the court below has not included it in the record. I mention it in my brief as follows:



“It was stipulated between counsel at the time of the decision of the court at Tucson that the petition might be amended so as to cover the questions presented in argument, that the grant was made by national officers and recognized and approved by the national government. This stipulation, for some reason, does not appear in the record. The opinion of the court and the decree entered thereon is in harmony with the amendment agreed to.” (Appellee’s brief, page 8.)

I intended to, and presume I did, repeat this statement in oral argument before this honorable court. The decision of the Court of Private Land Claims and the decree each recited that the petitioner had title both from the nation and the state. (Record, pages 237-47.) The decree was agreed upon by counsel. (Record, page 236.)

Second—I respectfully submit that the court erred in holding that the states or departments surrendered their right in and power of disposition of the public lands by virtue of the Constitution of 1836.

It is now the settled law of this court that prior to the promulgation of the Constitution of 1836 “the several states had authority to make sales of vacant public lands within their limits, and that such sales, unless annulled by the national government, must be considered as grants to be recognized by this government under the terms of the treaty of 1853.” (Camou vs. United States, May 31, 1898.)

And this authority was, in part at least, derived from the act of August 4, 1824, concerning which Mr. Justice Brewer, speaking for the court in *Camou vs. The United States*, says:

“The language of the revenue decree of 1824 is indefinite and does not, in terms, name vacant public lands, yet both the nation and the states understood that its effect was to grant authority to the states to sell such lands and appropriate the proceeds in settlement of the amounts charged against them by the nation.”

That we may better understand the animating spirit of the Mexican form of government, I quote:

“It must not be forgotten that Mexico, since its separation from Spain, in 1821, was assuming to act as a republic, subject to express constitutional limitations. While temporary departures are disclosed in her history, the dominant and continuous thought was of a popular government under a constitution, with defined rights, duties and powers.” (Mr. Justice Brewer in the *Camou* case, *supra*.)

There was no warrant or authority in the Constitution of 1824 authorizing the congress of the Mexican nation to destroy the autonomy of the states and abolish their legislatures. That instrument provided the manner for its amendment, but it was expressly provided that the powers delegated to the several states of the Union should never be curtailed or abridged. Article 171 of the Constitution of

the United Mexican states, of October 4, 1824, is as follows:

“Article 171. Those articles of this Constitution and of the constitutive act which established the liberty and independence of the Mexican nation, its origin, form of government, liberty of the press and the division of the supreme powers of the Union *and of the states can never be changed.*” (1 White, page 410.)

The politician arm of our own government regarded the acts of the Mexican congress changing from the federal to the central system of government as but an usurpation, concerning which President Polk, in his second annual message, December 8, 1846, says:

“By a sweeping decree of a congress subservient to the will of the dictator the several state Constitutions were abolished and the states themselves converted into mere departments of the central government. The people of Texas were unwilling to submit to this usurpation. Resistance to such tyranny became a high duty.” (Appellee’s brief, pages 48-49.)

And the Mexican nation itself regarded the acts passed for the purpose of centralizing the government as passed without authority and insisted that the Constitution of 1824 had always remained in full force and vigor, and that the rights, powers and privileges delegated to the several states by virtue of that Constitution had never been abrogated.

In the act of constitutional reforms of the Mexican nation of May 18, 1847, passed by a congress elected upon the downfall of the central system and in accordance with the Constitution of 1824, it is said:

“The states of Mexico by a spontaneous act of their own individual sovereignty and to consolidate their independence, guarantee their liberty, provide for the common defence, establish peace and procure the welfare thereof, formed a confederation in 1823, and afterwards, in 1824, constituted a political system of union for their general government under the form of a popular representative republic and upon the pre-existing foundation of their natural and reciprocal independence.

“That that compact of alliance, the origin of the first Constitution and the only legitimate fountain of the supreme power of the republic, subsists in all its primitive vigor and is, and must be, the principle of every fundamental institution;

“That this same constitutive principle of the federal union, *if it has been opposed by a superior force could not and can not be altered by a new Constitution.*” (Reynolds, page 281.)

From this it will be clearly seen that the congress regarded the autonomy of the states as having continued unimpaired, although opposed by a “superior force” of those who had imposed the central system upon the nation.

This is further illustrated by the declaration in the same act of reforms:

*"That the states that compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration."* (Reynolds, page 281.)

From the foregoing it would seem that the powers theretofore vested in the several states were re-established prior to the cession of the territory acquired by the Gadsden purchase.

But, considered from any standpoint, whether the rights delegated to the several states were destroyed or abridged by the acts centralizing the government or whether they remained unimpaired, yet I respectfully submit that the change from the federal to the central system was but a change of political rights and was not a change of property rights. The Constitution of 1836 claimed to protect every person in his property rights. (Article XLV., subdivision 3 of the Constitution of 1836.) This Constitution did not destroy, nor did it purport to destroy that invisible, intangible being, the state of Sonora; the name was changed and the form of government to a large extent, but the political entity was not annihilated; neither did the central Constitution divest, nor claim to divest, the former states of their right of disposition of the vacant lands within their respective borders.

This is further demonstrated by a reference to the subsequent scheme of government of the departments in 1843. (See title VI. of the basis of the political organization of Mexico, 1843—judicial power of the Supreme Court.)

This court laid down the rule for the interpretation of legislation as to the rights of property, in the case of *Rutherford vs. Green*, 2 Wheat., 96; and *United States vs. Aredondo*, 6 Pet., 691. The court said:

“Whatever the power of a legislature may be, its acts ought never to be construed, as to *subvert the rights of property*, unless its intention to do so shall be expressed in such terms as to admit of no doubt, and to show a clear design to effect the object.”

By the act of October 3, 1835, the legislatures of the states were directed to discontinue their legislative functions, but the governors and all subordinate officers of the states were continued in office, subject in the discharge of their duties to the supreme government of the nation. (Reynolds, pages 195-96.)

Article 1 of the law of April 17, 1837 (being the article referred to in the preamble to grants made by the departments mentioned *infra*), provides:

“Until the general congress establishes the revenues that are to form the national exchequer of Mexico the revenues, taxes and property of which the supreme government is in possession and the revenues, taxes and property which the departments established or acquired under the federal system and which existed at the time of the publication of the decree of October 3, 1835, shall continue.” (Reynolds, page 224.)

It is certain that in Mexico it was considered that the right of ownership or disposition of the public lands within the respective states as organized



and existing prior to 1836, inured to the benefit of the departments of the same name after the new organization centralizing the government in 1836. Sonora and other states or departments of the Mexican Union acted in accordance with this understanding. The preamble of the grant, in *Anisa, Administrator, etc., vs. United States* (161 U. S., pages 208-229)—this being a grant made during the departmental period—states:

“Whereas, Article 11 of the sovereign general decree, No. 70 of the 4th of August, 1824, ceded to the old states the revenues which in said law of the general government did not reserve to itself, one of which is that from the lands, in their respective districts, which, therefore, belong to them, and for the disposal of which the honorable constituent congress of the state, which was Sonora and Sinaloa, united, enacted laws, etc., etc. \* \* \* the said revenue from lands being now one of those of this department of Sonora which have continued and must continue as provided in Article 1 of the decree of the 17th of April, 1837, that of the same month, 1839, and of the 24th of December, 1840.”

This is the construction placed upon these laws by those charged with their execution. These officers assumed to have the right to sell and did sell and dispose of the public lands. They received the purchase price for these lands and turned the money into the public treasury.

The Mexican nation knew that the department of Sonora was disposing of the public lands within

its boundaries after the change of government in 1836. "We must in each case endeavor to ascertain what the Mexican government recognized as valid, and when this is done the duty of respecting and enforcing the grant arises." (*Camou vs. United States*, pages 7-8.)

From 1836 to 1853 the government of Mexico never protested against this exercise of power by the department or state of Sonora, and the non-action of the government certainly raises a strong presumption that the power was properly exercised. (*Ely's Administrator vs. United States*, page 8.)

With reference to the situation of affairs in Mexico at the time of the change from the federal to the central system, I beg to call attention to the following in *Ely's Administrator vs. United States*, *supra*, which, it seems to me is particularly applicable in this case:

"It is doubtless true that a change of sovereignty implies a revocation of the authority vested by the prior sovereign in local officers to dispose of the public lands. And yet we think that rule is not controlling in this case, for the new sovereign made an order continuing the functions of the local officers and one of these local officers, making a sale in accordance with the provisions of the prior laws, caused the money received therefrom to be paid into the treasury of the new sovereign, and that sovereign never returned the money thus received or challenged the validity of the sale thus made. It is not a case in which the local officers attempted to dispose of public lands in satisfaction of obli-

gations created by the former sovereign but one in which a sale was made for money and that money passed into the treasury of the new sovereign.”

The record here discloses the unquestioned fact that the \$400 paid by Rodreguez for the land, and the money paid as fees and charges of the officers, was paid into the public treasury. (Record, pages 19 and 21.)

Third—I further respectfully submit that the learned court erred in holding that the appellee did not have title from the Mexican nation and that the laws of the nation were not complied with by the board of sale (Junta de Almondes) in making the sale to Rodriguez.

The opinion says, page 7, that the board of sale (Junta de Almondes) was a national instrumentality, not a state instrumentality, and continues:

“If however, the vacant lands became the property of the national government by the Constitution of 1836 and could be disposed of by or through the Junta de Almondes) the procedure required by the law creating it would have to be followed. This law provided that sales and purchases made by the board (junta) should be published for at least eight days beforehand and by placards which shall be posted in the most public and frequented places and shall be inserted in the newspapers of the greatest circulation, if there be any in the place, the notice to contain the more essential circumstances and the necessary instructions pertaining to the matter.

These provisions are not shown to have been complied with, and the record precludes any presumption that they were."

The regulations above quoted, to be followed by this board of sale, are those provided by article 131 of the treasury regulations of July 20, 1831. (Reynolds, page 160.)

In the light of the present holdings of the court that Sonora had the right of disposition of her public lands from the formation of the government up to 1836, it can not be claimed that the regulations of 1831 concerning the sale of national property when promulgated had in contemplation the sale of lands of the several states. It was not lands within the states, but other property that should be sold in the manner stated in the opinion, and the regulations which the court says were not complied with were not regulations with reference to the sale of the vacant lands of the states.

We must turn, then, to the condition of affairs after the change of government to the central system, and we find a decree was passed April 17, 1837 (Reynolds, page 225), providing for another and different board of sales, with power of purchase and sale of property. Article 73 of the law of April 17, 1837, is as follows:

"All the purchases and sales that are offered on account of the treasury and exceed \$500 shall be made necessary by the board of sale which in the capital of each department shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the at-

torney general of the treasury and the auditor of the treasury, who shall act as secretary.  
\* \* \*.” (Reynolds, page 225.)

It was the board of sale provided for by this law that made the sale to Rodriguez. This board substantially complied with all the requirements of the law. The land was appraised for \$400. The board could not know until after sale that it might not bring to exceed \$500; hence its participation in the sale. The board did not act until after the proceedings leading up to the actual sale of the property had been submitted to the attorney general and he had made a favorable report thereon recommending that the land be sold by the board of sales, which recommendation was followed and the land sold by said board in accordance therewith. (Record, pages 17, 18.)

For the reasons hereafter stated, we are clearly of opinion that articles 12 and 13 of the regulations of October, 1835, quoted on page 5 of the opinion, did not have reference to the sale of lands within the state, and it was not necessary to have the previous approval of the supreme government for sales of property such as was made in this case.

There seems to be doubt about what part of the regulations of July 20, 1831, were in force in 1837, but with the law settled that the states had the right of disposition of their public lands up to at least 1836, it does not matter whether the regulations of 1831, or any part of them, were in force in 1837. The national government not having the right of disposition of these lands, in 1831, certainly could not have

been making regulations concerning their disposition at that time.

I respectfully call attention to the opinion of the court below upon the power of this board of sales. Mr. Justice Sluss, speaking for the court, uses this language:

"It is unquestionable that the sale, that is the essential act of passing the title, was performed by the board of sales, (Junta de Almondes). It was not made by any of the individual officials who were members of the board but by the board in its organized capacity as an official body.

"The board of sales was wholly unknown to the state law of Sonora and derived no authority from any law of Sonora as a state. It was an official body expressly created by the Mexican national government and vested with absolute power to make sales of public lands within that department.

"Now, the act of making a sale is the essential thing—the gist and meat of the transaction. And it is the actual authority with which the board was invested, and not what the individual members of the board thought about the source of that authority, which gave effect and validity to its act in making the sale.

"By section 17 of the decree of April 17, 1837, these several officers composing the board, being officers of the former state and of the then existing department, were taken, and constituted, a part of the nation, clothed with national authority to make the sale of the land.



“The board so created and so authorized did in fact make the sale \* \* \*.” (Record, page 243.)

While I believe that in all substantial respects this board of sale complied with the laws of Mexico in making sale, yet I respectfully submit that if the right of disposition of these lands was in this board of sales and the board sold the same to Rodriguez and Rodriguez paid his money for the land, that the Mexican government while retaining the money would be estopped from saying that its officers did not technically comply with the provisions of its laws in making the sale. If the board had authority to sell and did sell for a money consideration, and the Mexican nation had full knowledge, as it must have had, of the action of the board, it will not be permitted to set up a technical non-compliance with its laws by its own officers in making the sale. The new government (United States) takes the place of the old (Mexico), and will protect all property rights that Mexico would have protected had the ceded territory remained within the jurisdiction of the latter.

“It was undoubtedly the duty of congress, as it was its purpose in the various statutory enactments it has made in respect to Mexican titles, to recognize and establish every title and right which before the cession, Mexico recognized as good and valid. In other words, in harmony with the rules of international law, as well as with the terms of the treaties of cession, the change of sovereignty should work no change in respect to rights and titles; that which was good

before should be good after; that which the law would enforce before should be enforceable after the cession." (Ely's Administrator vs. United States, *supra*.)

The language of this court, speaking through Mr. Chief Justice Marshall, concerning a deed made by authority of a sovereign state, is most applicable in this case:

"The legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power which must find its vindication in a train of reasoning not often heard in courts of justice." (Fletcher vs. Peck, 6 Cranch, page 87.)

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#### THE FOURTH PROPOSITION.

The opinion (page 9) says: "It is conceded that at the time of the grant the state of Sonora was in rebellion against the nation. It and its officers, therefore, were opponents of the national authority, not its instruments; while declaring independence of it they could not claim to act for it and convey its title."

I respectfully ask the pardon of this learned court in earnestly dissenting from this statement in the opinion. It has at least never been intended to concede, for such is not the fact, that at the time of the grant in this case, or at any other time, the state of Sonora was in rebellion against the nation. The

situation in Sonora was far different from that in Texas. Texas was in fact in rebellion against the nation, attempting to, and finally succeeded, in setting up and maintaining an independent government. This was not the situation in Sonora. Sonora never attempted to secede from Mexico. At all times, and in transacting all public business, and in transacting the business with reference to this grant she recognized "the august Mexican nation." She never declared or attempted to declare her independence of the Mexican nation.

In December, 1837, General Urrea, the governor of the department of Sonora, who had been appointed by and with the approval of the supreme government, and acting under such appointment "proclaimed" against the central system and reassembled the congress of the state under the federal system. (Record, page 105.) There was no attempt to secede from the Union, no attempt to exercise independent authority or claim allegiance to any other power than that of Mexico. The only claim was that she had a right to exercise her political functions under the national Constitution of 1824. The general government never treated Sonora as in a state of insurrection or rebellion. It was not the officers who executed these title papers, either those of the state or the nation, but others who had set up this claim on behalf of Sonora; but however true this may be, it is also true that all of the officers at all times recognized that Sonora was a part of the "august Mexican Nation," and subject to its dominion and authority. The Mexican nation never questioned the validity of the transaction of public business in Sonora during this

period. Neither the general government nor Sonora herself ever repudiated the transactions of that period. It is disclosed by this record that during the year 1838 more than twenty grants of land were made in Sonora. These grants are recognized as valid titles to-day. (Record, pages 85-86), and if it had been considered that these officers were exceeding their powers in making those grants, we certainly would find some law or decree disapproving or annulling their acts.

As a state, Sonora had a right to make sale of public lands. As a department, she had the same right. Such grants or sales vested title in the grantees, and certainly until some disapproval of these acts by the national government was formally signified the estate would remain in the grantee. The Mexican nation acquiesced in the powers exercised by Sonora at the time this grant was made. The history of those times shows that during all of the period after the departmental governor had proclaimed against the central system Sonora was represented in the national congress and was a part of the national government.

I now respectfully beg to call special attention of this learned court to the following with reference to the laws quoted in the opinion, and it is proper here to keep in mind the fact, that this grant is not a colonization grant, but one of bargain and sale to

a native Mexican citizen for the purpose of settlement and cultivation; the right to make these sales and to receive the revenue from them was vested in the states, not by the law of colonization, but by the law classifying the revenues, and while the former was repealed and the power to colonize foreigners was assumed by the national authority, under the central system, the law of August 4, 1824, classifying the revenues was never repealed, but on the contrary was expressly retained in force. (See article 1, decree, April 17, 1837; Reynolds, page 224.)

If this learned court will note this distinction between the law governing colonization and the right to sell vacant public lands to Mexican citizens, it will be seen that the law of April 17, 1837, of December 7, 1837, of September 15, 1837, of April 25, 1835, and of April 4, 1837, in no way conflict with or affect the right of the officers of the several states or departments to dispose of their vacant public lands to their own citizens.

It is conceded that the right to make the sales of land was vested in the officers of the respective states prior to the change of the form of government in 1836; after this date the court in its opinion justly gives great weight to the language of the laws of the period leading up to and terminating in the change of the form of government. The first of these laws referred to is that of October 3, 1835, and the regulations promulgated as a part of the same. The former (the laws) contain no provision referring to public lands, and the latter (the regulations), when properly construed, or perhaps more accurately speaking properly translated, are equally silent on the same subject. It will be noted that from August 4,

1824, until long after the sale of the land involved in this controversy, two classes of property had been considered in all the laws with reference to the disposition of property in Mexico; namely, those classes of property included in the first ten articles of the act of August 4, 1824, the revenues of which were reserved to the nation and the other classes of property referred to in article 11 of that act, the revenues from which and the power of disposition of which was vested in the states, as has been held by this court in the several cases passed upon at this term.

As has been heretofore stated, the regulations of 1831 must of necessity have referred to that class of property only the revenue arising from which was reserved to the nation, and hence can not have applied to the vacant lands the revenue arising from which belonged to the states.

Article 13 of the regulations of October, 1835, when properly construed (or, rather, translated) is in no way inconsistent with the right of the states or of the successors of the states—the departments—to dispose of the vacant lands within their respective boundaries. The translation of the 13th article of the regulations of 1835, cited in the opinion, would appear on its face to restrict the power of the governors to make sales of this class of lands without having the previous authority of the supreme government, and this seems to have been considered of great, if not controlling importance in the opinion rendered in this case, for without this restriction on the part of the governors there is no limitation put upon the power of the officers of the departments to perform all the functions that had theretofore been performed by the officers of the states.



It is now settled that the revenues from all sources named in the first ten articles of the revenue act of August 4, 1824, were reserved to the Mexican nation, and that the revenue derived from the sale of the vacant public lands within the states was not included in either one of the first ten articles of that act, but was excluded therefrom, and that this was one of "the revenues which are not included in the foregoing articles" and which by the eleventh article is declared to "belong to the states."

Camou vs. The United States, No. 28.

Perrin vs. The United States, No. 30.

Among the articles of this revenue act, specifying the revenues which are reserved to the nation, is article 9, which is translated as follows:

"9—The national *property*, in which are included that of the inquisition and the temporalities, and all other rural and urban *estates* which now belong, or which may hereafter belong to the public treasury."

In order to understand fully the entire system provided in Mexico for raising and classifying the revenue, it becomes necessary to resort to the original Spanish, so as to avoid a confusion of terms, which has, we most respectfully suggest, possibly misled the court:

The words "national property," as used in article 9, and which are included in the revenues reserved to the nation, are in the original "*bienes nacionales*," and the word "estates" as used in the same

article is in the original "*fincas*." Said article 9, in the original, being in full as follows:

"9. Los *bienes* nacionales, en los que se comprenden los de la Inquisicion y temporalidades, y cualesquiera otras *fincas* rusticas y urbanas que pertenecen o que pertenecieren en lo de adelante a la hacienda publica."

It will thus be seen that the national property, "*bienes nacionales*" and the estates, both rural and urban, "*fincas rusticas y urbanas*," furnish a portion of the revenues which are reserved to the nation, and which, under the decisions in the case of *Camou vs. The United States*, *supra*, and *Perrin vs. The United States*, *supra*, do not and can not be held to include the vacant public lands. And these decisions are in accord with the meaning and general understanding of these terms when used in Mexican legislation, for whenever, in such legislation, it was intended to refer to the public lands, or to the vacant public lands, the terms "*baldios*" or "*hucos y baldios*" were universally used.

It is important that this use of terms should be particularly noted in order that these terms may be given the same meaning whenever they occur in subsequent legislation or regulations relating to the same subject matter.

This being the status of affairs, that is the revenues arising from the sale of the vacant lands within their respective borders having, by the act of August 4, 1824, been assigned to the states, it was natural and in accordance with the declared system of Mexico that the colonization law of August

18 of the same year provided that "the congresses of "the several states shall enact \* \* \* laws or "regulations for the colonization of their respective "demarcations \* \* \*." (Reynolds, 121.) And it was not at all inconsistent with this system that the nation should, in 1831, make regulations in respect of the sale of such property as had, by the revenue act of August 4, 1824, been reserved to the nation, and that these regulations could not have been intended to apply to the public lands (*baldios*) is clearly shown by decisions of this court in the Camou case, *supra*, and in the Perrin case, *supra*, in both of which cases the title was issued by the state officers after the promulgation of the regulations of 1831.

This brings us to the act of October 3, 1835, and the regulations made thereunder, and here is the first apparent departure from the well settled system of Mexico, *i. e.*, that the national property (*bienes*) and the national estates (*fincas*) were to be disposed of under the law and regulations of the nation, while the public lands (*baldios*) in the states were to be disposed of by the respective states and their officers. We say apparent, for the departure is only apparent. There was no real departure, and the apparent departure, counsel respectfully suggests, grows out of the confusion of terms, to which reference has already been made.

There is nothing in the act of October 3, 1835, which in any way interrupts or interferes with the prevailing system, and the only apparent reference to the revenues from or the sale of the public lands is in article 13 of the regulations. This article, as translated, is as follows:

"13—Until the attributes of the government  
"and departmental boards in what relates to the  
"treasury are declared by law, said governor  
"shall make no sales of *land (fincas)* or *property*  
"*(bienes)* nor contracts, nor extraordinary ex-  
"penses for said department without previous  
"approval of the supreme government."

The learned court has construed the word  
"lands" as used in this article to cover vacant public  
lands of Mexico, and has so construed the article as  
to inhibit the governors from making sales of lands  
such as those purchased by the grantee in this case.

A reference to Mr. Reynolds' compilation and  
translation of these laws—and, in fact, a reference  
to all laws of Mexico where the word is used—will  
show that this construction is exactly in opposition  
to the true definition of the word "*fincas*" as used by  
the translator, and of course as used by the original  
law-maker, and it is here but just to observe that  
in no particular is the care exercised in the prepara-  
tion of the valuable work of Mr. Reynolds more  
clearly shown than in the fact that where a word  
which has a doubtful or a double meaning is rendered  
into English, it is followed by the word as used in  
the original Spanish.

Thus in this case the word *fincas* is sometimes  
rendered land, but never in the sense of public or  
vacant land. This is shown by the excellent defini-  
tion given of *fincas* on page 43 of the same work.  
There the author says:

"*Fincas* are all those lands that are not *bal-  
dios* or public lands—wild unimproved lands be-

“longing to the nation.” And we now add the words “or states.”

It is very certain that the word “*fincas*” is used in contradistinction to the word “*baldios*,” the former referring to one class of property and the latter to another.

In other words, *fincas* when used in the regulations means just what this court held, the same word meant when used in the ninth article of the act of August 4, 1824, *i. e.*, lands other than vacant public lands. The same may be said of the word property (*bienes*). Though a broad term, it has never been used in Mexican legislation as referring to the vacant public lands, and it should be given the same meaning here as in the act of August 4, 1824, namely, as referring to other classes of property than such lands.

Illustrative of this we find the following in the Mexican legislation:

July 5, 1836, the national congress passed a revenue act entitled

“July 5 de 1836, Law—An annual tax of 3 per 1000 in the value of rural *fincas* in the republic is established.”

Legislacion Mexicana by Dublan y Lozano,  
volume 3, page 176, No. 1755.

On October 3, 1836, we find another law explanatory of this revenue act, in full as follows:

“October 3, 1836, Law—Properties that remain subject to rural taxation under the denomination of rural *fincas*.

“Under the denomination of rural *fincas* to which the law of July 5th last refers is included all rural property under the names of farm (hacienda) ranch, orchard or other similar name whatever be its location, in or out of towns, with a house or without, the products from which are agricultural; except those places in settlements which are cultivated for mere recreation, without special profit to the owner.”

Id., volume 3, page 197, No. 1779.

Giving to these two terms this meaning and the apparent interruption or departure from the settled system of disposition of property in Mexico disappears. It will be remembered that the nation was at this period in a transitory state, passing from a federal to a central form of government. While the departments succeeded the states with the same names, and while the departmental officers were changed in name, their duties were identical, except where they conflicted with express laws. (Article XCII., Decree of April 17, 1837.) The classification of the revenues was expressly retained (see article I., Decree of April 17, 1837), and in every particular, except as to the political status, and where otherwise expressly provided by law, the right of the states remained in the departments, and in respect of property rights there was no change whatever.

The construction here given to the thirteenth article of the regulations of October, 1835, and this construction only, can make a consistent system for the disposition of public property in Mexico; and this construction, and this construction only, is consist-



ent with the correct definition, or rather translation, of the word "*fincas*" as used in that article, as contradistinguished from the word "*baldios*," which is always used in the Mexican law when the vacant public lands are referred to.

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With reference to the mortgage given by the Mexican nation, it is sufficient to say that no one is making or has made any claim under it. Were such a claim made different questions would arise, but as this mortgage, and the other stipulations given as security for its payment were made solely for the benefit of the mortgagee, it is not clear how the United States can avail itself of them.

No specific lands are given. When the purchaser of the scrip presented himself to the local authorities, he could have it assigned to him by metes and bounds. Until then, he had title to no particular tract. His script, until located, was like a floating grant, or a United States soldier's warrant for land.

Hundreds of grants were made in California, a territory of the nation, subsequent to 1837 under the law of August 18, 1824, and the regulations of 1828, and confirmed by this court, notwithstanding the fact that California was one of the departments in which part of the hundred million acres of land was pledged as security for the national debt.

Treated as a mere assertion, on the part of the Mexican nation of a co-ordinate, or even a superior right to dispose of the public domain, this is immaterial unless some person shall appear who holds under some conveyance or grant made in pur-

suance of such right; and it should not be forgotten that all this mortgage legislation was enacted by those who had imposed the central system upon the nation.

The theory adopted by the opinion, that the lands in question were sold by state authorities on the state account, suggests the further consideration that at the time of the sale Sonora, while not claiming to be independent of the nation, was a conservative protestant against the dictatorial proceedings which gave rise to the Central System; she claimed that the Constitution of 1824 still existed *de jure*, and ought to be re-established in fact; in 1846 that Constitution was rehabilitated everywhere in Mexico as an instrument never rightfully annulled. This rehabilitation reinvested Sonora with her old dominion, and in 1849 the decree with reference to Sonora's lands (Reynolds, page 294) expressly admitted her then existing right to cede them. In this situation of affairs Sonora could not, after the rehabilitation of the Constitution of 1824, justly or equitably repudiate the sale of this land. She never attempted to do so, and if, as stated in the opinion, she sold the land in the exercise of what she claimed to be her constitutional powers, the re-establishment of the Constitution of 1824 and her right of disposition of her vacant public lands would by relation confirm what she had done under her old claim of right.

In conclusion: I do not think it proper to take the time of this learned court in considering petitions for rehearing; ordinarily I would not presume to do so; to ask that this be done in the present case is to me a question of much delicacy. It is, however, true

that in this case the questions involved are largely new and at least difficult of proper solution. The court was nearly equally divided in opinion; all the equities in the case are with the appellee; there is no dispute about his boundaries; he has never claimed anything but that which was sold to and paid for in cash by those under whom he claims; he has no quarrel with settlers; he bought the land in good faith, and has spent *all* his fortune in trying to reclaim it and make it fit for cultivation. These facts appear in the record; to repeat them here is but again saying that which was said by all the members of the court below before whom the testimony was taken.

With strong convictions of the justice and right of the appellee's case we respectfully and earnestly ask that the prayer of this petition be granted.

A. M. STEVENSON,  
Counsel for Appellee.

JNO. F. SHAFROTH,  
Of Counsel.

We hereby certify that in our opinion the foregoing petition for rehearing is well founded in law.

A. M. STEVENSON.  
JNO. F. SHAFROTH.

June 23, 1898.

1006

James P. [unclear]

June 15, 1894

Office of the U. S. District Court  
JAMES P. [unclear]  
JAMES P. [unclear]  
JAMES P. [unclear]

# In the Supreme Court of the United States.

OCTOBER TERM, 1893.

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THE UNITED STATES, APPELLANT, }  
v. } No. 1046.  
EARL B. COE.

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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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## MOTION TO ADVANCE.

The Solicitor-General respectfully shows to the court that the Department of Justice is in receipt of a petition for the advancement of this case, numerously signed by the taxpayers and citizens of Yuma County, Ariz., upon the grounds therein stated, as follows :

That the said case involves the title to the principal part of the agricultural land in Yuma County now capable of irrigation ; that until such suit is finally adjudicated the said land can not be settled and farmed ; that as a consequence the business interests of the county are stagnated ; a great many people are prevented from settling on the said lands and making homes, to the benefit of both themselves and others.

The Department of Justice concurs in this view, and the Solicitor-General now respectfully moves that, on account of the particular circumstances of the case and the public interests involved, it be advanced and assigned for argument at an early day in the next term. The appellee consents to the advancement.

LAWRENCE MAXWELL, JR.,  
*Solicitor-General.*



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No. 301

THE COURT OF PRIVATE  
LAND CLAIMS

THE COURT OF PRIVATE LAND CLAIMS

THE COURT OF PRIVATE LAND CLAIMS

# **In the Supreme Court of the United States.**

OCTOBER TERM, 1894.

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THE UNITED STATES, APPELLANT, }  
v. } No. 591.  
EARL B. COE.

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## **APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.**

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### **BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE MOTION TO DISMISS THE APPEAL.**

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This is an appeal by the United States from a judgment of the Court of Private Land Claims confirming a Mexican grant in favor of the appellee to land in the Territory of Arizona. The motion to dismiss the appeal proceeds upon the ground that so much of the act establishing the Court of Private Land Claims (March 3, 1891, c. 539, sec. 9, 26 Stats., 854) as provides for appeals to this court is unconstitutional. The brief in support of the motion assumes that the act is otherwise valid. But the provision for an appeal to this court seems to be so

closely connected with the rest of the act that the fate of the entire act may be involved in the attack upon the constitutionality of the provision for appeal. An appeal to this court, whose judgment alone in that event is to be final, seems to be such an essential part of the scheme provided by Congress for the adjustment of these Mexican grants that it may well be doubted whether the rest of the act can stand if the provision for appeal is eliminated as unconstitutional.

By article 8 of the treaty of Guadalupe Hidalgo and article 5 of the Gadsden treaty the property of Mexicans within the territories ceded by Mexico to the United States was to be "inviolably respected," and they, their heirs, and grantees were to "enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States" (9 Stat., 929, 930 ; 10 Stat., 1035). But the duty of fulfilling these treaty obligations rests with the political department of the Government. Congress may either itself discharge that duty by passing directly upon the claims of private claimants, or it may, in its discretion, delegate the determination of such claims to a commission or to a board or to a judicial tribunal. In other words, while claimants under grants made by Mexico or the Spanish authorities prior to the cession have no *right* to a *judicial* determination of their claims (*Astiazaran v. Santa Rita Land and Mining Co.*, 148 U. S., 80, 81, 82, and cases cited), Congress may, nevertheless, provide for their determination by *judicial* proceedings if it sees fit. This latter proposition seems to be denied by the appellee, but it is not open to debate. It

is affirmed in terms by Mr. Justice Gray in *Astiazaran v. Santa Rita Mining Co.* (148 U. S., 80, 81, 82), and is involved in many prior decisions. In *United States v. Ritchie*, (17 How. 525, 533, 534), a proceeding in a district court of the United States for the determination of similar claims was sustained and an appeal therefrom to this court was allowed and determined. In that case the proceeding in the district court was designated an appeal from the California board of commissioners, but, being held invalid as such because the California board did not possess judicial power, it was sustained as an original proceeding in the district court. I do not, of course, suggest that the present appeal can be sustained as an original proceeding in this court, for its original jurisdiction is prescribed by the Constitution, and does not include such a case. The point to which I cite the case is this: That it is competent for Congress, if it sees fit, to provide for the judicial determination of claims against the United States for lands granted by the Mexican authorities prior to the cession.

To the same effect is *United States v. Arredondo* (6 Pet., 691, 709), where this court entertained an appeal from the superior court for the eastern district of Florida under the act of May 23, 1828, "for the settlement and confirmation of private land claims in Florida;" and in *Botiller v. Dominguez* (130 U. S., 238) are cited several cases of judicial proceedings to determine private land claims under treaties. Mr. Justice Miller concludes his opinion in that case by saying (pp. 255, 256):

There can be no doubt of the proposition that no title to land in California dependent upon Spanish or Mexican grants can be of any validity which has not

been submitted to and confirmed by the board provided for that purpose in the act of 1851; or if rejected by that board, confirmed by the District or Supreme Court of the United States.

It was for the purpose of providing for the judicial determination of such claims that the act of March 3, 1891, establishing the Court of Private Land Claims was passed. It covers (section 6) lands "derived by the United States from the Republic of Mexico and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado, or Wyoming." The jurisdiction of the court is limited to the settlement of claims *as against the United States*, section 13, paragraph 5, providing that "no proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed." The question, therefore, is whether it is competent for Congress to create a court such as the Court of Private Land Claims for the settlement of the claims of private claimants *against the United States* to lands acquired by the United States under the Mexican treaties.

The objection taken to the court is that the judges are not appointed for life, and that they are therefore incapable of being invested with any portion of the judicial power of the United States. They are, however, appointed for the life of the court. Section 1 declares that "the judges of the Court of Private Land Claims shall hold their offices for a term expiring on the 31st day of December, A. D. 1895," and section 19 that "the powers and

functions of the court established by this act shall cease and determine on the 31st day of December, 1895."

We submit—

(1) That the Court of Private Land Claims is not one of the inferior courts mentioned in article 3, section 1, of the Constitution, but that it is a court, created in virtue of the general right of sovereignty of the Federal Government, for the settlement of disputed claims against the Government arising out of its treaty obligations; in other words, that while it exercises judicial power it is not "the judicial power of the United States" within the meaning of article 3; or, if this view be not sound,

(2) That under article 3, section 1, it is competent for Congress to vest any portion of "the judicial power of the United States" in judges who are appointed to hold during the continuance of their offices, although for a limited term; in other words, that the provision of the Constitution that "the judges of the supreme and inferior courts shall hold their *offices* during good behavior" means during good behavior and the continuance of the office.

# I.

THE AUTHORITY FOR THE ESTABLISHMENT OF THE COURT OF PRIVATE LAND CLAIMS IS NOT FOUND IN ARTICLE 3, BUT IN OTHER PROVISIONS OF THE CONSTITUTION. IT IS A LEGISLATIVE AND NOT A CONSTITUTIONAL COURT.

While courts in which "the judicial power of the United States" is vested must be established subject to the limita-



tions as to the tenure of the office and the compensation of the judges prescribed by article 3, section 1 of the Constitution, it is well settled that that section of the Constitution does not exhaust the power of Congress to establish courts. In *American Ins. Co. v. Canter* (1 Pet., 511), Chief Justice Marshall, speaking of the Territorial courts, said :

They are legislative courts created in virtue of the general right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States.

The Court of Private Land Claims is not invested with judicial power to settle controversies between persons, but only with power to settle as between private claimants and the United States the obligations assumed by the United States under their treaty with Mexico. This is not the exercise of the judicial power mentioned in article 3 of the Constitution, which extends "to cases in law and equity." The judicial power, it is true, extends also "to controversies to which the United States shall be a party," but that means controversies of an essentially *judicial* nature and does not include suits *against* the United States to enforce their political obligations under treaties.

The judicial power granted to the Federal Government by article 3 is the power to coerce *others* by the judgments of its courts, and not the power to submit claims *against itself* to judicial determination. The latter power every government has, as an incident of sovereignty, without grant. When, therefore, the Federal Government con-

sents, as it may, to submit claims against itself to judicial investigation and determination, it is at liberty either to select the ordinary judicial tribunals or to establish and ordain for that special purpose such courts as it sees fit. To courts so established the limitations of the Constitution affecting judicial tribunals invested with power to settle the claims of one person against another, have no application.

By the eleventh amendment it was in effect declared, contrary to the decision of the court in *Chisholm v. Georgia* (2 Dall., 419), that the judicial power conferred by article 3 does not include suits by individuals against States. Chief Justice Jay, in the course of his opinion in *Chisholm v. Georgia*, page 478, expressed the wish that the Constitution had extended the judicial power to cases *against* the United States, but was obliged to admit that it did not, and no one has ever been bold enough to make the claim. For any general discussion of the nature of the federal judicial power it is hardly necessary to go behind the learned opinions of Mr. Justice Gray in *Wisconsin v. Pelican Insurance Co.* (127 U. S., 265), and in *United States v. Lee* (106 U. S., 196, 223), where all the earlier decisions are marshaled.

The Constitution, article 2, section 2, gives authority to the President and the Senate "to make treaties." Article 1, section 8, confers power upon Congress "to constitute tribunals inferior to the Supreme Court," and "to make all laws which shall be necessary and proper for carrying into execution \* \* \* all \* \* \* powers vested by this Constitution in the Government of the United States

or in any department or officer thereof," and article 4, section 3, gives power to Congress "to make all needful rules and regulations respecting the territory or other property belonging to the United States." These provisions of the Constitution are ample, we submit, to sustain the Court of Private Land Claims as an inferior tribunal established, not for the exercise of "the judicial power of the United States," mentioned in article 3, but to declare the rights of private claimants against the United States under a treaty, with respect to territory and property claimed by the United States.

It is hardly necessary to add, what I have already intimated, that I do not dispute the proposition of the appellee that the case is not one which can be brought within the original jurisdiction of this court. I also concede that, unless the Court of Private Land Claims is found to be a *judicial* tribunal, this court can not take cognizance of its judgments on appeal, for it is only from judicial tribunals, and not from boards or commissions, that appeals are allowable to this court under the Constitution, since an appeal, in the very nature of things, implies an original *judicial* hearing from which the appeal is taken. If the tenure of the judges, however, is found to be such as Congress may properly establish, no question is open as to the judicial character of the Court of Private Land Claims, for the act of Congress invests it, not only with the name and procedure of a court, but with all the essential characteristics of a judicial tribunal, including the most essential attribute of all, the power to bind the parties by its judgments.

## II.

THE JUDICIAL POWER OF THE UNITED STATES UNDER ARTICLE 3 OF THE CONSTITUTION MAY BE VESTED IN TEMPORARY COURTS, PROVIDED THE JUDGES ARE APPOINTED FOR THE LIFE OF THE COURT.

The authority for the establishment of the Court of Private Land Claims as a legislative court under other provisions of the Constitution than article 3, section 1, seems to be sufficiently clear to relieve me from extended discussion of the question whether "the judicial power of the United States" under article 3 can be vested in temporary courts whose judges, although not holding office during their own lives, are nevertheless appointed for the life of the court. That question has never been presented to this court, and in view of the weighty consequences involved in its determination, will hardly be passed upon unless absolutely necessary to the decision of the case.

It is true that in several cases before this court involving an examination of the nature of the judicial power vested in the territorial courts, it has been said that the judges of those courts do not, and by reason of the limited term for which they are appointed, can not exercise "the judicial power of the United States" under article 3 of the Constitution, but it is to be noted that none of the cases present instances of an appointment *to last during the continuance of the office*. They are all instances of appointments for limited terms to *offices* which continue indefinitely, as in the case of territorial judges appointed for four years to an *office* created for an indefinite term, or

in the case put by way of illustration by Mr. Justice Jackson in *Kentucky and Indiana Bridge Co. v. L. & N. R. R.* (37 Fed. Rep., 567, 612), an appointment as Interstate Commerce Commissioner for the term of six years to an *office* which continues indefinitely.

It was doubtless the intention of the framers of the Constitution to make the judges of the Federal courts independent of legislative control, but that is accomplished if the tenure of the judge is made coincident with the term of the office. But according to the appellee's view no judicial *office* can be created except for the life of one or more incumbents—a limitation not suggested or imposed by any clause of the Constitution.

It is to be observed that the question at bar is not whether a Federal judge, originally appointed for an indefinite term, can be deprived of his compensation and tenure by the *subsequent* abolition of the *office*, but whether it is competent for Congress in the first instance to establish a Federal court, under article 3 of the Constitution, which shall endure for only a limited period, provided the judges are appointed for the whole life of the court. A denial of this power imposes a serious limitation upon the authority of Congress without compensating advantages. In the nature of things the occasion for special tribunals, such as this court and the court of commissioners of Alabama claims, established by the act of June 23, 1874 (c. 459, 18 Stat., 245), is temporary. The independence of the judges is secured by appointing them for the full life of the court, but if the appellee's view prevails, the establishment of courts for such exigencies is practically impossible.

## III.

THE COURSE OF PROCEDURE PRESCRIBED FOR THIS COURT ON APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS DOES NOT HAVE THE EFFECT TO CONVERT SUCH APPEALS INTO ORIGINAL PROCEEDINGS.

The act provides (section 9) that—

On any such appeal the Supreme Court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive.

It is objected that the procedure thus prescribed makes the appeal in fact an original proceeding. It is admitted by the appellee that there is no objection to the direction that every question that was open in the court below shall be open in this court, for that is true of all equity appeals. The objection taken is that authority is given to this court to hear additional testimony. Even if that clause be beyond the constitutional power of Congress, it can easily be eliminated without affecting the rest of the act or the validity of the general provision for appeals. Indeed, the language is only directory and not mandatory. I submit, however, that authority to an appellate court to hear additional testimony does not change the appellate character of the proceeding, or convert it into an original proceeding. The hearing of further testimony—indeed, the hearing of the testimony *de novo*—is an incident of

appellate procedure in many jurisdictions. An appeal does not necessarily imply more than that the subject-matter has already been instituted in and acted upon by some other court. How the appellate jurisdiction shall be exercised depends entirely upon the legislature in the absence of constitutional limitations affecting the procedure. The declaration of the National Constitution is simply that this court "shall have appellate jurisdiction \* \* \* under such regulations as the Congress shall make."

#### IV.

THE CONSTITUTIONALITY OF THE COURT SO FAR AS IT HAS JURISDICTION OVER LANDS IN THE TERRITORIES IS NOT OPEN TO DEBATE.

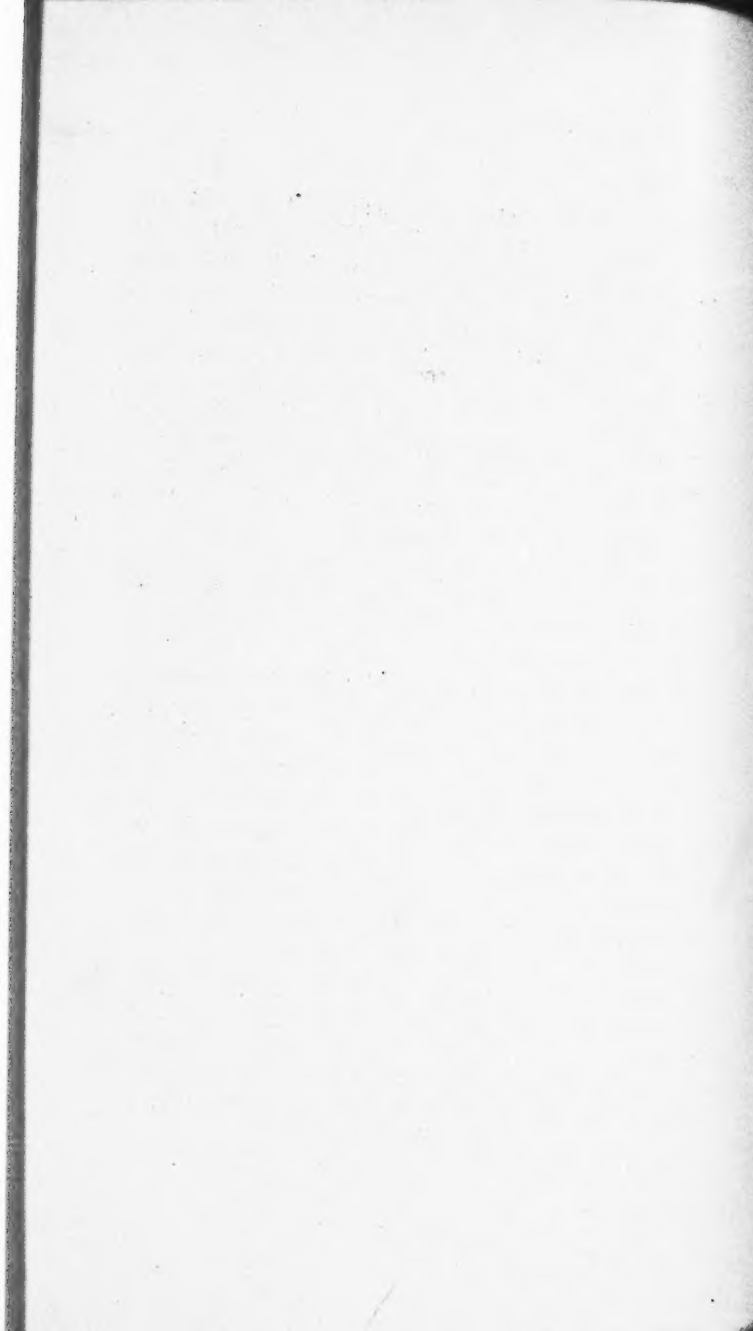
In so far as the act establishing the Court of Private Land Claims provides for the determination of claims against the United States to property situated in any of the Territories no objection can be taken to its validity, for it is clearly within the authority of Congress to establish in the Territories, or for the determination of the title to property situated in the Territories, such courts with such tenure in the judges as Congress sees fit. This is decided in the numerous cases that have been before the court involving an examination of the nature of the Territorial courts and the tenure of their judges. The cases are marshaled and reviewed by Mr. Justice Harlan in *McAllister v. United States* (141 U. S., 174, 180-184). In the case at bar the judgment concerns land in the Territory of Arizona. No reason is perceived why Congress might not have



directed the controversy to be submitted for decision to the Territorial court, whose judges are appointed for four years. I submit, therefore, that even if the act be found invalid so far as it undertakes to confer jurisdiction for the settlement of claims to land in the States of Nevada, Colorado, and Wyoming, it is constitutional as respects land "within the Territories of New Mexico, Arizona, or Utah," and the appellee's motion must be overruled. Neither he nor any claimant of lands situated in the Territories has a right, in any view, to complain of being remitted to a court whose judges are not appointed for life. And since the great bulk of the unsettled Mexican grants are for lands in the Territories, there is no objection to sustaining the Court of Private Land Claims in its jurisdiction over those lands, even if the act must be held invalid as to lands situated in the States.

The settlement of claims under Mexican grants made prior to the cession has long been deemed a matter of the greatest importance. To upset the scheme provided by Congress in this act establishing the Court of Private Land Claims involves the most serious consequences and embarrassment, not only to the Government, but to thousands of claimants. This much is said only for the purpose of suggesting to the court the practical importance of the question presented by the motion.

LAWRENCE MAXWELL, JR.,  
*Solicitor-General.*



Chas. A. S.  
Chief of City Gen. (Circuit)  
for Appellants

Filed Dec. 14, 1896.  
In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES APPELLANT,

OR

EARL B. COE.

No. 48.

Office Supreme Court  
FILE

DEC 14 1896

JAMES H. McKEE

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Statement, Abstract and Brief on behalf of the  
United States.

HOLMES CONRAD,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney General.

# In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,

*vs.*

EARL B. COE.

No. 45.

*APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.*

Statement, Abstract and Brief on behalf of  
the United States.

## STATEMENT AND ABSTRACT.

This suit was originally instituted February 2nd, 1892 by the Algodones Land Company, under the provisions of an act entitled, "An act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3rd, 1891.

Pending the litigation, the Algodones Land Company conveyed the property to Earl B. Coe, and upon motion the action was revived in his name.

The basis of the claim is an alleged grant which

shows: That one Fernando Rodriguez, on January 4th, 1838 at Hermosillo, presented a petition to the Treasurer General of the State of Sonora, Mexico, stating that he had sufficient means to settle and cultivate a tract of vacant desert land, on the northern frontier of the state, situated between the Colorado and Gila rivers, said lands including the tract from the southern side of the Gila river, in front of the junction of the same with the Colorado river, as far as the crossing (paso) of the Algodones, and from said point following the eastern margin of the Colorado river as far as the junction of the same with the Gila, a distance of five leagues.

"Wherefore in the name of the sovereign authority of the *State*" he formally registered the same and asked that a person be appointed to make the measurements and valuation and the necessary publications "as required by law."

He also offered at the proper time to furnish satisfactory evidence as to his ability to pay the just taxes (derechos) into the public treasury,

"It being understood, Señor Treasurer, that the registry that I now make is under the condition that the settlement and occupation of the said vacant lands by me shall be when the notorious condition and circumstances of the region of the country in which said lands are situated may permit the same to be done; since the said vacant lands are situated in a country

desert and uninhabitable, on account of the hostility of savages; it being well known that a settlement made by the Spanish Government in the desert country Colorado was entirely destroyed in a short time by the Yuma Indians and other savages, etc.," (R 8).

Such was the petition and the peculiar condition sought to be imposed by the petitioner upon the Treasurer-General of the State of Sonora.

On January 12th, 1838, at Arispe, the petition was received; it was ordered by Jose Justo Milla, Auditor of the Treasury of the State, that as the petitioner had ample means to carry out the undertaking, ample authority was conferred on Don Mauricio Carrillo, a resident of the Capital, to proceed to the measurement, valuation, and offer of sale of said vacant lands, but first to cite *the interested party* and colindantes (adjoining proprietors) to appear and defend their boundaries, said proceedings to be in entire conformity with the provisions of *sections 3, 4, 5, 6, and 7 of Chapter 90 of law No. 26 of the 11th of July, 1834*, and also with the regulations for measurements of lands for raising of cattle and horses, which regulations are formed in fulfillment of the requirement of law No. 30 of the 20th of July, 1825, adjusting the sitios by multiplying the number of varas contained in the diameter from north to south, by the number contained in that from east to west, so as to give to each sitio the area corre-

sponding to the sum of twenty-five millions of square varas, as required by the existing laws in relation to the matter.

When these proceedings were finished, the original with a topographical map of the land attached should be returned to the office; at the same time Carrillo was required to notify the interested party and others who might be interested bidders, that they might be present either in person or by agent, at the public sale of said lands which are to be made in the "Junta de Almoneadas" in favor of the person who may be the highest bidder (R. 8 & 9).

On January 12, 1836, Mauricio Carrillo, the Commissioner, appointed his assistants as follows: —

*Measurers*, Juan Rios Caudila and Jose Maria Sais.

*Counter*, Julian Padillo.

*Marker*, Alouzo Maria Trecierra (R. 9).

On the same date the certificate is signed by Carrillo, Padillo and Trecierra, being respectively the commissioner, the counter and the marker, that the appointment of measurers, counter and marker had been accepted and the persons qualified (R. 9 & 10).

It will be noted, although this certificate is signed by the commissioner, counter and marker, it is not signed by the measurers.

On February 3rd, 1838, the survey is made as



stated, "on the vacant lands named El Paso de los Algodones" (R. 10).

It will be noted that although the report of the survey is signed by the petitioner (Rodriguez), the commissioner (Carrillo), the counter (Padilla), and the marker (Trecierra), it is not signed by the official measurers (Candelario and Sais), nor is there any other statement or note as to why they did not sign the record of their official acts, being the actual survey and one of the most important in the entire proceeding.

On February 4th, 1838, the day following the survey, the commissioner makes a peculiar certificate to the effect, that the measurements having been concluded, and with the approbation of the interested party, the officials and witnesses, he determined "*in view of the impossibility of taking further proceedings in the matter in this dangerous country,*" and since the officials who made the measurements were sufficiently informed as to the character of the lands, he would proceed with his party to the other tract of vacant land, named "La Punta del Sargento," which he was commissioned to survey, etc., and upon the conclusion thereof they would return to Arispe for the purpose of concluding the expedientes (R. 10 & 11).

On March, 18th, 1838. at the City of Arispe, the commissioner appointed as appraisers of the value of said land, Alonzo Maria Trecierra and Juan Rios Can-

delario, the marker and one of the measurers, after qualifying they appraised the five square leagues at four hundred dollars, Rodriguez, the petitioner, being satisfied, but stated, "he would desire to ask some equitable grace in this particular in view of the fact that on account of the danger from savages, it will be very difficult for some years to realize settlement and cultivation of said lands for the just and notorious reasons set forth in his petition of registry" (R. 11).

On the same day the measurement and valuation being concluded the commissioner ordered that thirty public offers of sale (*pregones*) be made, promulgating the same by official communication to the Senior Judge of the first instance of Guadalupe del Altar, to the end that he might give notice of said public sale in the *pueblos* of the district, and note is made that such official communication was sent as directed (R. 11 & 12).

As to whether there was ever any advertisement or *pregon* in the district in which the land was situated does not appear. Articles 75 and 76 of the law of the State of Sonora of 11th of July, 1834, being the same referred to in the preamble to the testimonio, require the proclamations of sale (*pregones*) of land to be made in the town to the jurisdiction of which they belong, and in case proclamation cannot be made in such place, then in any other, provided it is not out-

side of the respective district (Reynolds. 191).

It is evident from the certificate (R. 11 & 12), that Guadalupe del Altar was the proper place and nothing appears by return or report of the judge of the first instance that proclamations were made as required by law which is recited as authority for the proceedings.

On March 9th, 1838, at the City of Arispe, the Capital of the alleged State, the first of the thirty advertisements (pregones) was made and the form is set out in extenso, then follows twenty-nine minutes repeating the first offer, and are concluded on April 7th, 1838 (R. 12-15).

I wish to call attention to the fact that in the public advertisements soliciting bidders other than Rodriguez, no mention is made of the fact that Rodriguez had in his petition imposed a condition upon which he would purchase the property, to-wit:

"That the registry that I now make is under the condition that the settlement and occupation of the said vacant lands by me shall be when the notorious condition and circumstances of the region of the country in which vacant lands are situated may permit the same to be done, etc.,"  
(R. 8.)

Other persons who might desire to bid for the land were not placed upon equal terms with Rodriguez nor even notified that immediate possession would not be required as was the law and custom; nor does the ad-

vertisement release Rodriguez from the usual requirements in such cases.

On April 7th, no purchaser having appeared, the expediente was transmitted to the Treasurer-General of the State that final proceedings might be taken. (R. 15).

On the same day it was referred to the Promoter-Fiscal of the public treasury (R. 16).

On April 8th, the Promoter-Fiscal of the treasury of the State made his report finding the proceedings regular, and that at the thirty public offers of sale no purchasers appeared, and he further finds, "neither does it appear that any interested party appeared from the District of Guadalupe del Altar, to which Judge of the first instance the Commissioner gave at the proper notice of the proceedings and sale."

He further finds that the sale of five leagues of land at the junction of the Gila and Colorado rivers for four hundred dollars will be of great benefit to the public treasury and promote the settlement of Sonora, and that the enterprise of the Señor Don Fernando Rodriguez was laudable and worthy of all protection, for the reasons set forth in his petition, it being well known that such causes were the foundation of all grants made by the Spanish government in the desert lands of Sonora.

In view of which facts, he recommends that Rodri-

guez be admitted to a composition with the treasury of the sovereign state for said land, under the condition of settling the same when the circumstances would permit the same to be done, and recommends that the three public offers of sale (almonedas) be made, and when the purchase money should be paid into the treasury that title be issued (R. 16 & 17).

On the same day order was made for the three offers of sale (R. 17).

On the same day at Arispe the gentlemen composing the board of sales (junta de almonedas) having met, being the treasurer of the state, the comptroller, Jose Justo Milla, the judge of the first instance of the district of Arispe, Francisco Mendoza, and the administrator of the revenues of said district, Jose Carrillo, ~~the~~ the first offer was made by auctioneer Florencio Baldizan and no bidder appearing the proceedings for the day were closed (R. 17).

On the following day the second offer was made and no bidder appeared (R. 18).

On the following and third day, being April 10th, 1838, the third offer was made and the property sold to Rodriguez for four hundred dollars (R. 18).

It will be noticed in offering the property to the public for sale, no notice is given that possession need not be taken until the notorious conditions and circumstances of the country would permit, hence Señor

Don Fernando Rodríguez was obtaining material and valuable advantage over others who might be honest bidders for the property and which was concealed in his petition and the very friendly report of the Promoter-Fiscal.

On April 10th, 1838, Rodriguez was notified and promised to pay the purchase money, \$400.00, and \$30.00 for the title (R. 18 & 19).

Following is a certificate by Jose Justo Milla that Rodriguez had paid the purchase money and that entry thereof had been made on folio 18 of the "Libro Manuel de Cargo y Data," also certificate that on folio 19 of same book appears \$6.00 paid by Rodriguez, tax on sale (R. 19).

This concludes the *expediente* as it remains on file in the office of the Treasurer-General of the State of Sonora at the present time.

The instrument offered in evidence is erroneously called the *testimonio*, when it should be designated as the *titulo* or *grant* (patent).

The *expediente* is original in all its parts and should always remain on file in the archives. No preamble nor granting clause in case of land is ever attached to it.

The *testimonio* is the first copy of the *expediente*. It is that copy given to a party. In case of land, it is always preceded by a preamble, citing the laws under

which it is made, and is followed by the granting clause or grant signed by the granting officer. The preamble and grant and the signature of the granting officer are the only parts of it that are original. The instrument so made up is given to the grantee as evidence of title.

The only record of the issuance of the grant document is the note made in a book kept for that purpose. This, strictly speaking, is the *Toma de Razon*, the taking of a note or memorandum. As applied to land grants, it is a note or memorandum of the issuance of the *grant* or *final* title entered in a book provided for that purpose; this note contains such memoranda as will identify the grantee, date of grant and property granted.

The fact that such record has been made in the proper book should be endorsed on the grant document, and in every case where such record has actually been made, the endorsement gives the folio of the book where it is to be found. In *no instance* where granting documents bear such endorsements as the present can the *Toma de Razon* of the same be found anywhere in the book kept for that purpose.

On April 12, 1838, the granting document or patent was issued by Jose Justo Milla as auditor of the general treasury of the State.

He recites the *expediente* was concluded with all the formalities required by law and the supreme orders in



relation thereto, the original *expediente* remaining in the custody of the office of the treasury as perpetual testimony. He then recites:

"Wherefore in the exercise of the faculties conceded to me by the laws, decrees and regulations and the superior existing orders in relation to lands, by these presents, and in the name of the free, independent sovereign State of Sonora, as well as that of the august Mexican nation, I concede and confer upon in due form of law, the Señor Don Fernando Rodriguez," \* \* \*

"The five square leagues, and adjudicate the same to him under the conditions which have been admitted as equitable and just by interested party, the Senor Don Fernando Rodriguez, that is, that he shall settle and cultivate said lands so soon as the circumstances surrounding that distant and desert portion of the State may permit him to do so, in view of the imminent risk and danger there is on account of the savages, but when the said land shall once be settled and cultivated, they shall be kept in condition, and that they shall not be unoccupied and abandoned for any time; and if the same shall be abandoned for the space of three consecutive years, and anyone else denounce said lands, in that event, after the necessary proceedings, they shall be adjudicated anew to the highest bidder; excepting as is just, those years in which the abandonment was occasioned by the invasion of the enemies, and this only for the time that this condition of things exists," etc (R. 20 & 21).

This granting document bears the following indorsement:

“*This title remains registered*” in the corresponding book”  
*Rubric.*

(R. 21.)

This endorsement is untrue; the corresponding book for years from 1831 to 1849 exists and was found in the archives at Hermosillo (R. 85), but at the place by date where the note should appear, it is wanting, although we find notes of grants issued on April 10, 1838, and April 29, 1838, and the entry of this grant should come between these two. The only logical and reasonable conclusion to which I can arrive, is that this endorsement was made after the date it purports and after the entries in the book had been made, so that note ~~was~~<sup>not</sup> could be made in the proper place, and this accounts for the fact that the endorsement does not give the folio of the book as it should. This entry, we contend, is the only record of the grant proper, hence the same was not duly and regularly recorded as required by the sixth article of the treaty of Mesilla.

The next endorsement found on the grant document is the certificate that the fee of thirty dollars for issuance of title had been paid, and it will be noted that this certificate does give the folio of the book when the same was charged (R. 21).

On April 13, 1838, the same was approved by the

Governor of the State, ~~de~~ Leonardo Escalante (R. 21). What vitality this approval can give, I am unable to determine, as the Governor under the laws of the republic had nothing to do with the issuance of titles to lands at that date, and under the laws of the *extinct* State of Sonora he was equally without power or authority.

A certificate by Encinas, alcalde, dated March 27th, 1838, is to the effect that Rodriguez had sufficient means to stock and cultivate the land (R. 25 and 26, also 36 and 37).

A document so made up is the testimonio and grant delivered to the party as evidence of title.

The document, I admit, is in substantially the same form as others during that period with the exceptions to which I shall call attention.

It will be understood the grant attached to the testimonio is original and should be the only original document so attached, others being copies of the *expediente*.

There are several documents and communications relied upon by claimant.

On December 1st, 1840, the Chief of the Treasury of the nation, replying to a number of communications from Jose Maria Mendoza, Superior Chief of the Treasury of the Department of Sonora, in relation to vacant lands and their status, stated that until by legislation all doubts should be removed, land matters

should be determined in the junta de hacienda (board of the treasury). Further replying to the communication of February 23, 1839, caution is given to comply with Article 74 of the laws of April 17th and December 7, 1837.

Further caution is given as to the controversy between the government and the national Bank over the mortgage and instructing a suspension of delivery of lands to the agent of the bank and if some had been delivered he should recover the same (R. 37 & 38).

If the vacant lands in the State of Sonora belonged to the State in 1838, they belonged to it in 1840, and I cannot understand how this communication directed to Jose Maria Mendoza, a Departmental officer, can inure to the benefit of a State title when that State had been extinct since 1836. The other communication, dated June 6th, 1847, is from the same Jose Maria Mendoza, styling himself Commissary General of the State of Sonora, in relation to this particular grant, asking the Minister of State and Land Office of the Republic to bring the matter to the knowledge of the President of the Republic, and accompanied said communication with the testimonio which had been presented by Rodriguez (R. 39.)

If this communication is genuine, I do not understand how the testimonio is now found in the possession of these claimants and no action upon it by any of

the federal officers. The evident purpose of the transmission of the testimonio at Rodriguez' request in 1847 to the national government was to obtain from it some approval or recognition of his grant. The communication is dated June 6th, 1847. The document presented in evidence is a certified copy of the alleged original communication made in the fifties; the last figure of the date is torn, and the certificate also states that this certificate and copy extended at Ures, Capital of the State of Sonora, at the request of Rodriguez.

What was Rodriguez troubling himself for when he had delivered all the papers to Juan Robinson in 1847 and had no further interest in the property? Why the papers and documents are silent as to approval or recognition after so many attempts does not fully appear. Juan Robinson, in his testimony, makes no mention of any attempt upon his part, or by his authority, to have any action taken in relation to this grant by the Mexican nation. Juan Robinson's testimony is silent as to the date in 1847 when Rodriguez transferred him the property by the delivery of all the title papers.

The next certificate, dated the 15th of January, 1858, is also by Mendoza, at this time pensioned commissary-general of the State of Sonora, and Florencio Trejo (R. 39 and 40).

These men certified at that date that the *expediente*

in this case was found by them in the archives at Arispe and that the signatures were genuine. There is also attached another certificate dated September 10th, 1858, by the governor and secretary, that these signatures were genuine (R. 40).

As to this I propound the question, Who procured these certificates at the various dates they were and are alleged to have been made?

Juan A. Robinson says nothing about them in his testimony, and according to that he was in possession of the *testimonio* and grant from 1847 and was the only person having any interest in the property.

There is another certificate by Jose Aguilar, dated June 8th, 1857, stating that the signatures to the *expediente* are genuine and that the grant is a legal grant (R. 40 and 41).

I do not understand who procured this certificate in 1859 for Mr. Juan A. Robinson, without his knowledge or consent. This grant with these various certificates seems to have been of great concern to Jose Maria Mendoza and a few of his confreres from 1840 to 1858, although the owner of the grant from 1847 to 1874 (Robinson) must have been ignorant of these proceedings or he would have mentioned some of them in his deposition. I shall take occasion later on to call attention to the many inconsistencies in these title papers going to the extent of good faith, although I now ad-

mit that the condition of the record tends strongly to prove the genuineness of the signatures of the various persons who purport to have signed the same, but does not entirely overthrow the internal evidence of ante-dating.

A large amount of oral testimony was taken by the claimant and the government as to the genuineness of the signatures of Jose Justo Milla and various others who purport to have acted as officials.

A large amount of testimony was taken to show that the proceedings leading up to the grant are in the usual form. I admit, on behalf of the United States, that the general form is substantially like those used long prior to the date of the grant, 1838, and for some time after.

Considerable testimony was taken by claimant to show that the *expediente* found in the archives was the only and proper record of the *issuance* of the *grant*, and in order to accomplish such a probative result, distinguished lawyers and officials were examined quite at length as to their knowledge of the manner of making grants, the legal effect of various official acts and the political history of the country, which testimony when compared carefully with the title papers and *expediente* and alleged correspondence in this case and all others from the date of the regime of the intendentes



to the present time, will demonstrate how inaccurate and unreliable is such testimony.

The deposition of Juan A. Robinson, to whom Rodriguez sold the property in 1847 and delivered the title papers, is to be found in the record (pp. 61 to 66)—and to this entire deposition we call especial attention.

He testified in the year 1880 and must at that time have had more intimate and accurate knowledge of everything connected with the claim than anyone now living.

He was 78 years of age and had resided at Guaymas, State of Sonora from 1821 to 1861 and occasionally from 1861 to 1869; was U. S. consul at Guaymas from 1842 to 1850 or '51. Was personally acquainted with Fernando Rodriguez from 1853 until his death in 1865.

(NOTE.—It is contended the date 1853 is a clerical error, and such is likely the case.)

Was aware of the fact of his obtaining a grant at the junction of the Gila and Colorado rivers from the authorities of Sonora in the year 1858. The extent of the grant was five leagues or sitios. He purchased this grant from Rodriguez in 1847 in the settlement of commercial transactions between them, but never received any deed or conveyance to the same from Rodriguez, for the reason that all of the title papers had been delivered to him, and believing Rodriguez to be an honorable man, he neglected the matter. In the year 1873, however, he did obtain from the heirs of Rodri-

guez a conveyance to the same. At the time of the sale Rodriguez handed over the original title papers obtained from Sonora authorities, and the same were held by him until 1874, when he turned the same over to the Colorado Commercial and Land Co.

He testified that Rodriguez assured him that the papers were gotten up in conformity with the Mexican laws and were full titles and covered in every respect the ranch of El Paso de los Algodones.

The witness then testified in substance, with respect to the possession of the property, that on account of the danger arising from the barbarous Apache Indians, he found it impossible to take possession of the same, although he made liberal offers to parties to go there and he only succeeded finally by offering handsome compensation to settlers who supplied the U. S. military stations in Arizona and southern California, to locate their establishments on the property, and by that means a nucleus was formed for the present town of Yuma. He said he never went into possession of the property himself, "the settlers taking possession in my stead, I made it a consideration for them to go there. I gave them a part of the property; I would rather not say any more than that I know they went there and held the property."

Witness further testified that he was aware that Rodriguez made several attempts to occupy the land

before selling to him, but was compelled to abandon these attempts on account of the hostilities of the Indians. He says that possession was taken after the Gadsden purchase, and soon after troops were sent there and possession was held up to the time of the sale to the corporation in 1874. He says that from the very moment the troops went there the settlers took possession in his name and have remained there ever since.

On cross-examination he stated that the country at the junction of the Gila and Colorado rivers was of great importance on account of the geographical position and considered the head of navigation from the Gulf of California and likely to become a point of export of the metals and mines in that vicinity, which were reported fabulously rich.

At the time that the grant was made to Rodriguez the Indians were on the war-path, making it impossible for white people, except with heavy escorts of troops, to remain for any time in the vicinity. Various attempts were made by the owners, but they were invariably driven back, several times with loss of life.

Rodriguez, at the time of the purchase of this grant in 1838, was considered very rich. Witness was not aware that Rodriguez was the owner of any other grant of land from the state of Sonora, and said that he did not think he had any other grant. He further states that previous to 1847 he made various attempts to

equip several bodies of rancheros and vaqueros, and dispatched them to take possession of the same, but they never reached the grant, returning a report that they had met a large body of savages and were unable to proceed without a sufficient force of troops.

The testimony of the other witness for claimant was to the effect that the documents were genuine and that the *expediente* or matrix is the record of the grant.

Aguilar, the present state treasurer, testified, in identifying the book called the "Toma de Razon" of grants, that the book was the register of grants of land (R. 71.), containing registry of grants issued from 1831 to 1849 (R. 85).

I contend that this book is not only the proper, but the only place, where official record is made of the issuance of the granting document. The *expediente* is the record of the preliminary proceedings, but not of the grant.

The remainder of the testimony consists of legal opinions, which I will notice in argument. A large number of laws and decrees are printed in the record and will be referred to in the brief and argument.

### BRIEF AND ARGUMENT.

In presenting this case, I wish at the outset to insist that the act of Congress, creating and conferring jurisdiction upon the court of Private Land Claims, is materially different from any other private land claim act,

and is quite as worthy of study as the Spanish and Mexican laws applicable to land titles presented for adjudication. However liberal in construing rights protected by treaty stipulations it is our duty to be, still the judiciary should go no further than it appears Congress intended, I have no doubt every lawyer, who has had occasion to try a case under this act, feels he could draft one more in harmony with the true spirit of the treaty, and much more equitable in all its provisions than the present. From the inception of the litigation before the lower Court to the present, strong and persistent effort has been made, and in my opinion not always unsuccessful, to induce the Court of Private Land Claims to ignore the limitations and restrictions upon, as well as legal sufficiency of proof which would justify, a judgment of confirmation in any case.

This case is a fair illustration of the breaking down of barriers with which Congress in its wisdom and judgment has seen proper to surround the Court in permitting it to enforce political equities and obligations.

*Under the Spanish and Mexican systems of land tenure possession was necessary to an investure of title, so as to transfer any vested rights to the grantee against the King or government.*

It is admitted that no possession was taken of this property until after the country was ceded to the

United States by the treaty of Mesilla (Gadsden purchase).

The hasty and unsatisfactory manner in which Juan Robinson took possession, according to his testimony (R. 63 and 64), is calculated to lead one to a conclusion, that the settlers who took possession in his stead, did so under the supposed right of the United States, and not by the permissive authority of the unknown owner, Juan Robinson, who had no conveyance until 1874. I doubt very much whether the settlers following the wake of the establishment of the military post on the frontier, ever heard of Mr. Robinson during their natural lives. It does appear that no conveyance was ever executed in favor of the settlers establishing the town of Yuma until January 31st, 1892, a few days before the filing of the petition in this case.

Rodriguez in his application for the land stated that he would take the property conditionally, viz:

"That the settlement and occupation of the said vacant lands by me shall be, when the notorious condition and circumstances of the region of country, in which said vacant lands are situated may permit the same to be done, etc." (R. 8).

The final grant or patent also contains such reservation in favor of Rodriguez. (R. 20).

The land was petitioned for and sold for a specific purpose and use, and there entered into the consideration for all dispositions of the public lands, the actual

occupancy of the property at least within a reasonable time. The value was fixed very low with this object in view.

*Opinion of Promotor-Fiscal. (R. 16).*

The officers were not permitted by law to sell lands except for specific uses, nor am I aware of any law, either Spanish or Mexican, which authorized the local officials to waive the use and occupation of the property which was part consideration for the grant; in fact the policy was firmly established under Spain and continued after independence, that the real and most valuable consideration passing to the government was the settlement and reduction of the vast areas of vacant lands to useful purposes; these title papers clearly recognize this policy and requirement, as do all such documents which I have had occasion to examine, either ancient or modern. If the sale was unconditional, then why make the reservation in favor of Rodriguez?

The conditions of the country and the difficulties of complying with the requirement of possession and occupation were admittedly well known, and can furnish no excuse for failure to take possession for sixteen years prior to the cession and not until after the United States made the same possible by the intervention of its army.



*De Vilemont vs. U. S.*, 13 How., 261.

*Boisdore's Heirs*, 11 How., 63-94, 95.

Under Spain and Mexico possession was necessary to the investiture of title. The rights of the claimants must be adjudicated as of the date of the treaty, and no possessory rights acquired subsequent to the treaty can inure to the benefit of a Spanish or Mexican title protected by treaty stipulation. The United States agreed to recognize such rights only as existed at the time and which were strong enough to justify the claimant in demanding recognition by the former government.

I can not think that had Rodriguez or Juan Robinson applied to the department of public works of Mexico on December 30th, 1853, or June 30th, 1854, for a recognition of this title and it was made to appear that no possession had been taken, it would have received any serious consideration, nor do I believe equity and good conscience would have required it.

It is contended by counsel that possession was not necessarily an element in the investiture of title, and that it was not one of the conditions imposed or entering into the consideration for the grant; but if so, it was a condition subsequent and would not defeat the vested title, except in a proceeding for that purpose. I shall not discuss this question in its general sense, but only as the 13th section of the act makes it a neces-

sary element in establishing the right to have the decree of the Court at all.

Section 13 provides:

"That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely: Eighth. No concession, grant or other authority to acquire land made upon a condition or requirement, either antecedent or subsequent, shall be admitted or confirmed, unless it shall appear that every such condition and requirement was performed within the time and manner stated, in any such concession, grant or other authority to acquire land."

If possession was necessary to the investiture of title, or was necessary in order to justify Rodriguez in calling upon the Mexican government for recognition of the title, then I contend before the Court can confirm the title, it must appear possession was taken prior to the treaty.

In passing upon the requirement of the act, it appears to me that section thirteen was intended to and does apply with equal force to grants coming under section eight as well as to those within section six. And the question as to whether the land was subject to denouncement for failure to comply with conditions subsequent in their nature is immaterial, and the law relating to forfeiture for failure to comply with such condition has no application. The act requires that

claimant shall make it affirmatively appear that all conditions had been performed before the Court could pass a decree in his favor, and I stand on this question simply where Congress has seen proper to place a limit upon the power of the Court. That possession was a condition, I care not whether antecedent or subsequent, clearly appears from the petition, opinion of Promotor-Fiscal, and grant. The power of the local officials to waive this condition, I can find no authority for.

No possession was taken for sixteen years and we find, upon the change of sovereignty over the country, the land vacant, uninhabited, uncultivated and in no better condition than on April 12, 1838, the date of the grant; I am, therefore, forced to the conclusion that no equity, in the broadest sense, existed at the date of the treaty by virtue of possession in good faith or otherwise, and the justice of the eighth subdivision of section thirteen is fairly illustrated by this case.

Possession has always been carefully looked to in determining good faith and the force which the equities, if any, should receive.

**The grant in this case was not recorded as required by the sixth article of the treaty.**

It is true that the *expediente* is now found on file in the proper archives, but I deny that it is the grant or the record thereof.

Mr. Victor Aguilar, the present treasurer of the State of Sonora, and chief custodian of the archives, testified (R. 71), that he had no record in his office that would show who was treasurer general of the State in 1838; but in 1839 Jose Maria Mendoza was treasurer general, in 1837 the treasurers general were Jose Maria Mendoza and Ignacio Trellez. He also testified that Fernando Rodriguez obtained on the same day, April 12th, 1838, two grants, "Paso de los Algodones," for five leagues and "La Punta del Sargento" for ten leagues.

The witness was shown a book, which he admitted was a record of his office and said it was the "Toma de Razon" or register of the titles of grant to land. (R. 71). He examined it for the year 1838, and said he could find no record of either the Algodones or Sargento grants made to Rodriguez on April 12th, 1838. (R. 71.)

On page 75 of the record, in reply to questions by plaintiff's counsel, he testified:

"Q. Is not a matrix and expediente one and the same thing?

A. Matrix is the original paper that remains in the office, while an expediente is the *copy* of any paper."

Mr. Aguilar must have over-reached himself in interpreting what counsel was desiring to prove. The terms used, *matrix* and *expediente*, are one and the same

thing and it is an original and remains on file in the proper office.

"Q. Is not the matrix of a grant the primary record of the same?

A. Yes, Sir."

If the *original grant* is delivered to the grantee, with a testimonio of the preliminary proceedings (*expediente*) attached, thus forming the *titulo*, how can the "*matrix*" be the record when it is in possession of the grantee as evidence of title? This is a fair sample of all the testimony in the case as to the record of this grant. The record book (Toma de Razon) exists for the period 1831 to 1849 (R. 84 & 85).

It appears the record book does contain three grants issued during the month of April 1838 as follows:

April 10, Iusibampo.

April 10, Pedro del Tempo.

April 29, Lajitas y Palos Cramos.

It appears between January 31st and July 30th, 1838, twenty-one *grants* were recorded in this book. The Algodones and the Sargento grants both made to Rodriguez on April 12, 1838, do not appear to have been registered, although the proper place for them would have been between the record of the Pedro del Tempo and Lajitas y Palos Cramos grants (R. 85).

I am firmly convinced, had this grant been registered in the "proper book" on April 12, 1838, it would now appear in proof in this record as registered in

1838, between that of Pedro del Tempo, April 10th, and Lajitas y Palos Cramos, April 29. I am still more firmly convinced, had such a state of the archives existed, this Court would not now be burdened with the contention that the grant was not recorded as required by the sixth article of the treaty.

The endorsement on the grant in this case is untrue. In the case of *U. S. vs. Vallejo*, 1 Black 549, it is held, a false note of the record of a grant casts a suspicion on the whole, and is sufficient to justify a rejection of the same.

This was under the Guadalupe Hidalgo treaty, and it seems to me, to be going very far to hold, that the actual proof in this case complies with the sixth article of the Mesilla treaty, or that this grant can be fairly brought within its terms.

In the case of the *U. S. vs. Osio*, 23 How., 273, 279, the Court says:

"Adjudications of land titles were required by the Mexican law to be recorded. That requirement, however, was regarded as fulfilled, according to the practice in California, when a short entry was made in a book, kept for the purpose, specifying the number of the *expediente*, date of the grant, a brief description of the land granted, and the name of the person to whom the grant was issued. In this case, there is a certificate appearing at the bottom of the instrument to the effect that such entry had been made, but it is

wholly unsupported by the proof of the existence of such record."

In the case at bar the record exists and the note on the grant is found to be untrue.

In *U. S. vs. Teschmaker et al*, 22 How., (392,405) the Court says:

"There is no record of the title in the proper book shown in the case, nor exists in fact, as it is understood this book of records exists for the years 1844 and 1845, and no record is there found. The memorandum, therefore, at the foot of the grant by Arce, the secretary, 'note has been made of this decree in proper book on folio 4' is untrue."

It is apparent that the controversies arising in the litigation under the California Act, as to what was sufficient proof to justify a recognition of title under the treaty of Guadalupe Hidalgo, and especially the repeated contests as to the genuineness of various documents produced from private hands, induced Mr. Gadsden to guard by stipulation against their repetition, and require a complete record, such as ought to have been kept by Mexico and Sonora, and such as was really intended by the treaty of Guadalupe Hidalgo.

I am convinced, the treaty of Guadalupe Hidalgo and the adjudications thereunder really intended that all titles, either perfect or imperfect, should be verified by the records; if the record was lost or destroyed, that fact should appear in proof;



that the particular title, or papers upon which title was asked to be issued were genuine; that the proper records of the same had been made or kept; and that they were lost or destroyed. Proof of loss or destruction of records generally, without any particular connection being shown between the title papers presented and the lost records was not considered sufficient.

The cause of *U. S. vs. Cambuston*, 20 How., 59, was a fair construction of the requirements under the treaty and law, and in many instances, I fear, the adjudications under the present act have not adhered to these rules or the record status of the present title, as well as many others coming before this Court on appeal, would have received more careful consideration below.

I am compelled to assume the language of the treaty of Mesilla is no broader than was intended by the parties. I am still further led to the conclusion that the record intended was such as was actually kept for the information of the government of Mexico, and which was then and is now recognized as the proper register of the same, that is, the *expediente* on file in the office, and the note made of the issuance of the grant in the book kept for that purpose. The absence of either must be fully accounted for or recognition should not be given under the treaty.

If this book was not the proper place for the record

of the grant or patent, why do we find twenty-one grants registered between January 31st and July 30th, 1838, and three in the month of April of the same year, and the two grants to Rodriguez which were made April 12, 1838, both bearing endorsements that "*this title remains registered in the corresponding book,*" not appearing?

To my mind it is not sufficient answer to this, for the experts to undertake to bolster up false endorsements of notes of grants in "proper books" by testifying the *expediente* is the proper record of the grant, or that an endorsement on the *expediente* that title had been issued thereon, is the proper record required by the treaty. It is perfectly apparent the person who made the endorsement on the original grant or patent, as follows: "*This title remains registered in the corresponding book,*" did not understand that the *expediente* or a note made on it "that title had been issued," was sufficient record of the grant or even the proper record.

Bearing in mind that no possession, juridicial or otherwise, was taken prior to the treaty, and such material and controlling endorsement being found to be false, together with the other defects in the *expediente* to which attention is called in the statement, it leaves grave doubts in my mind whether the *grant* was not is-

sued subsequent to April 12, 1838, although every signature may be genuine.

Under the case of *U. S. vs. Teschmaker*, 22 How., 392, it seems to me this grant should be rejected, leaving out of consideration the mandatory language of the sixth article of the Mesilla treaty.

### STATE GRANTS.

**The states of the Mexican Republic were not at any time owners of the vacant public lands within their boundaries and never possessed the unrestricted right of disposition of the same.**

The foregoing proposition is based upon two grounds, namely:

*First.* The supreme executive of the government, possessed of executive and legislative powers, declared by a public order or decree on November 25, 1853, pending negotiations between Mr. Gadsden and the representatives of that government, which resulted in the Treaty of Mesilla (commonly known as the Gadsden Purchase), signed on December 30, 1853, and ratifications exchanged on June 30, 1854, that "the public lands, as the exclusive property of the Nation, never could have been alienated under any title by virtue of decrees, orders and enactments of the Legislatures, governments or local authorities of the States and Territories of the Republic."

*Second.* The title to the vacant lands prior to inde-

pendence was vested in the King of Spain, and upon independence was vested in the Empire, and then in the Republic, and was never transferred to the States. The only right to dispose of any of said lands by the States emanated from the Republic under and by virtue of what is known as the Colonization Law of August 18, 1824.

As to the first proposition, I submit that whatever may have been the exact status of titles to vacant public lands between the States and national government, or the contentions, controversies and revolutions arising therefrom, the declaration and action of that government upon the question during the negotiations for the treaty, should preclude any investigation of the subject by this government. To us, it is immaterial whether the national government, from a judicial standpoint, was right or wrong; its solemn declaration made at the time by public decree as to the real status of property situated within the States, must be taken as absolutely correct. We cannot look behind the declarations and actions of the treaty-making power, which is not restricted or limited by any fundamental law, and encumber ourselves with the decision of their past domestic bickerings, or the justice of claims that subjects, either individual or corporate, may assert or contend that they have against the government. It alone is authorized to speak for and bind them, and in an in-

ternational sense, the action of that government, whether right or wrong, must be binding upon its subjects who merged in the great political and international agent, to-wit, the treaty-making power. I may stop to remark that I know of no provision of the Mexican Constitution or Mexican law that authorizes the treaty-making power to dismember the State of Sonora and transfer political dominion over the same to the United States, without its consent. Yet, such transfer did take place and political dominion has been exercised by this government ever since 1853. The exercise of this power can only be justified by great political necessities, to which the constitution itself must often give way. If Santa Anna's usurping and discreditable administration could accomplish this result and we eagerly and designedly reaped the fruits of the same, it surely can not be contended that his declarations, lawfully and properly made, as to the status of the title of vacant public lands within that territory, are now to be questioned by any branch of this government.

In order that we may understand exactly what Santa Anna did in this respect, I quote all of the orders and decrees made on this subject, including the repeal and denunciation of his acts by the succeeding governments:

Decree of November 25th, 1853.

**Annuls Sales of Lands Made by States, etc.**

Antonio Lopez de Santa-Anna, etc.

Article 1. It is declared that the public lands,

as the exclusive property of the Nation, never could have been alienated under any title by virtue of decrees, orders and enactments of the Legislatures, governments or local authorities of the States and Territories of the Republic.

Article 2. Consequently, it is also declared that the sales, cessions or any other class of alienations of said public lands that have been made without the express order and approval of the general powers, in the manner prescribed by the laws, are null and of no value or effect.

3. The officials, authorities and employees, upon whom devolves the execution of this decree, shall proceed, as soon as they receive it to recover and take possession in the name of the Nation, of the lands comprehended in the provisions of Article 1, and that may be in possession of corporations or private individuals, whatever may be their prerogatives or position.

4. The judicial, civil or administrative authorities shall admit no claim of any kind, nor petitions whose purpose is to obtain indemnification from the Public Treasury for the damages the unlawful holders or owners may allege, under the provisions of the preceding article; and they shall preserve their right only against the persons from whom they have the lands they are now compelled to return.

Decree of July 7th, 1854.

**Annuls sales of lands made by States, Departments, etc.**

Antonio Lopez de Santa-Anna, etc.

Article 1. The titles of all the alienations of

public lands made in the Territory of the Republic from September, 1821, till date, whether by the general authorities or by those of the extinguished States and Departments, shall be submitted to the revision of the Supreme Government without which they shall have no value and shall constitute no right of property.

2. To this end the Ministry of Public Works shall appoint commissioners, who may be the agents it now has in all the Departments and Territories, to whom the proprietors of public lands, or those who represent them, shall be obligated to present the titles of the acquisition thereof, within the term of six months, counted from the date on which this law may be published in each capital. There shall be admitted, for the purpose of the present decree, not only the original documents, but also, in default thereof, copies thereof authenticated and conformable to the law, and besides compared by the commission that may receive them. Proprietors who do not comply with the obligations which are imposed on them by this and the preceding article shall be considered as detainers without any title. \* \* \* \*

5. The alienations of public lands, of whatever nature they be, that have been made by the authorities and officials of the departments without the knowledge and approval of the general government, during the epoch when the Central System was in force in the Republic, are void.

6. Those made by said authorities in the epochs of the extinguished Federations are likewise void; *provided*, they were not made for the purpose of extending and promoting colonization,



which was the purpose proposed by the law of August 18th, 1824.

7. Grants or sales of lands made to private individuals, companies or corporations, under the express condition of colonizing them, and the holders of which have not complied therewith in the terms stipulated, are declared to be of no value.

8. The alienations made by the States or Departments and declared void by the three preceding articles may, nevertheless, hold if the holders of the lands obtain the consent of the Supreme Government, and pay into the public treasury what it considers proper to exact as the value of the land; *provided*, they apply for this ratification within the time designated in Article 2, in which case alone there shall be no further proceedings to annoy or jeopardize them. \* \* \*

14. The law of November 25th of last year remains in force, in so far as it is not in conflict with the present decree.

Decree of August 20, 1855.

**Extends Time for Presentation of Title for Confirmation.**

Martin Carrera, General of Division, President *ad interim*, etc.

Only Article. In consideration of the difficulties that have arisen in various parts of the Republic, in consequence of the political movement that has interrupted the relations of the Capital with several of the Departments, and has prevented the holders of public lands from presenting their titles; and in attention to the fact

that in various cases it has been difficult for them to promptly get together all the documents necessary to legalize their respective acquisition, the time set in Article 2 of the law of July 7th, 1854, is extended another six months, which will end January 31st, next year, for the owners of public lands to present, for the revision of the Government, the titles to the lands they have acquired since the month of September, 1821.

Decree of December 3rd, 1855.

**Repeals Santa-Anna Decrees.**

Juan Alvarez, President ad-interim, etc.

Article 1. The decrees of November 25th, 1853, and July 7th, 1854, which submitted to the revision and approval of the Supreme Government the grants or alienations of public lands made by the local governments of the States or Departments and Territories of the Republic from September, 1821, to that date, are repealed in all their parts.

2. Consequently all the titles issued during that period by the Superior Authorities of the States or Territories under the Federal System, by virtue of their lawful faculties, or by those of the Departments or Territories, under the Central System, with express authorization or consent of the Supreme Government for the acquisition of said lands, all in conformity with the existing laws for the grant or alienation respectively, shall for all time be good and valid, as well as those of any other property lawfully acquired, and in no case can they be subjected to new revision or ratification on the part of the government.

3. The alienations of public lands that have been made by the authorities of the States or Departments and Territories without the requisites referred to in the preceding article and in contravention of the provisions of Article 4 of the law enacted by the General Congress on the 18th of August, 1824, are void and of no value, and the holders of that class of lands are subject to the penalties established by existing laws in the Republic for those who acquire property in an unlawful and fraudulent manner, unless they promptly obtain the approval of the Supreme Government, to which they shall apply therefor through the Department of Public Works."

4. All titles of acquisition of public lands which, under the law of July 7th, 1854, have been presented to the Department of Public Works for their ratification, under the provisions of articles 5 to 8 of said law, shall be returned to their respective owners without requiring payment of any kind of them. With regard to those in the case stated in Article 3, proceedings shall be taken in the manner provided for in the same.

5. The grants or sales of public lands made by competent authority and under the laws in force in their case, with the express obligation on the part of the new holders to colonize them in a given time, without their having complied therewith in the manner stipulated, are for that reason alone void and of no value, and said lands shall again become the property of the Nation.

\* \* \* \* \*

Decree of October 16th, 1856.

**Nullifies Certain Decrees of Santa-Anna.**

Ignacio Comonfort, substitute President, etc.

Article 1. The decrees of November 25th, 1853, and July 7th, 1854, are void.

2. Antonio Lopez de Santa-Anna and the Ministers who took part in their approval and promulgation are responsible, with their property, for the damages they have caused.

3. The Governors of the departments are likewise responsible, with their property, for the damages they have caused in the execution of the provisions on public lands, having exceeded the limits laid down in the several laws.

The foregoing laws will indicate the policy pursued by Santa Anna before the treaty and subsequent thereto, as well as the policy pursued in respect to this matter by those who succeeded him. An undefined controversy as to the title of the vacant lands had existed between the States and the nation from independence, and particularly on the part of the States distant from the Federal District. Whatever may have been the legal status of the title to the public lands, the government of which Santa Anna was the head and Dictator, was recognized by this government in making the treaty, and it does not become us to question his authority or to inquire into the manner of his acquiring it. The fundamental laws of the country, in conferring the right to treat with foreign nations, did

not restrict or limit the subject thereof. It will be understood that the rules governing the transfer of title to the public land from a nation to an individual, or the transfer of the same as between individuals, are very different from those to be applied when we come to consider the transfer of property as between two independent sovereignties. As suggested before, the right to dismember any portion of the Mexican Republic by the treaty-making power was not restricted or limited, and strange as it may seem, the constitution of the United States in conferring the treaty-making power upon the President and Senate places no express limitation upon them, nor does it restrict the right of disposition of any portion over which the government exercises political dominion, although it is vigorously contended that a dismemberment of a State without its consent is contrary to the spirit of our form of government. The general proposition being true, the treaty-making power being the only one to which we are to look, its representations and admissions will bind its subjects, although in a controversy between the subject and the sovereign in its local tribunals, the subject might be protected, and any wrongs suffered by him redressed.

It is true that these declarations made by the Mexican Government were not embodied in the treaty itself, but the treaty was negotiated and executed with

such declarations as the law of the country affecting the title to the property which we are obtaining. And although subsequently repealed and nullified, the lands came to us with the status of the title fixed, by what must be recognized as the law of the country as construed by the treaty making power. Under the treaty, private rights of property were to be protected, but those private rights were only such as the government ceding the country to us at the time recognized itself. A repudiation by the treaty-making power of State titles was as effective as the repudiation of the grant to the Duke of Alagon in Florida. Therefore, the vacant public lands that passed under the Gadsden purchase to the United States were passed without regard to the status of the State of Sonora toward the national government of Mexico.

The State of Sonora owned vacant public lands within its boundaries on June 30, 1854; Santa Anna's government passed to this government the title to them without the State's consent, and we have ever since held it and disposed of a large portion of it under our public land laws, irrespective of the rights that the State of Sonora had to the property and without any release to us or the Mexican nation under whom alone we claim. Therefore, treating the State of Sonora as a municipal corporation owning the land within its boundaries, by grant or title paramount, which had

not theretofore been reduced to private ownership, the question can well arise as to whether or not it still owns the property, and under the protecting clause of the treaty has not some claim upon the United States for the same. I do not think any one would assume, under the circumstances, that Sonora could maintain the contention that it was entitled to the property or entitled to reimbursement for the same from the United States, but must look solely and alone to its own government for redress.

Carrying this theory a step farther, it is contended that the State of Sonora owning the title to its vacant public lands, by its laws and through its officers had transferred portions thereof to various individuals whose titles were protected under the treaty. Yet, after all, in fixing the status of the title, we must go back to the sovereign from which it originated, and the only means we have of protecting ourselves under treaties is to assume and take the actions and declarations of the treaty-making power as absolutely true, unless a fundamental law of the country places some limitation upon the right to make such declarations. In other words, it may be properly said that the decree of Santa Anna of November 25, 1853, was an admission as to the status of the title to the vacant public lands which were to be ceded to the United States.

I do not care, for the purposes of this case or this



question, what the individual views of lawyers may be as to the justice of Santa Anna's reign; it is an incontrovertable fact that he was the Dictator and ruler of the government to whom the people were submitting at the time, and from whom we purchased the property for ten million dollars. From an international standpoint, and in treating for the cession of any part of the domain of another country, this country always looks to the treaty-making power alone and never recognizes a municipal subdivision or a citizen thereof except as they may speak through that power. We have no better illustration of this principle than the position taken by Italy a short time ago as to the killing of a number of its subjects at New Orleans in what is called the Mafia riots.

If we are to assume the settling, by reason of the change of sovereignty of a portion of Sonora, the internal differences between that State and the nation, we have assumed a burden that will never reach a satisfactory conclusion and which was the cause of almost continuous revolution in the Republic of Mexico until a few years ago, when the matter was amicably settled by means of a compromise, resulting in the ultimate admission by the States of the title of the government, and surrendering whatever claims they had thereto to the national government.

We have another illustration in the settlement of the

northeast boundary line between Great Britain and the United States, involving a portion of the territory of the State of Maine, in which also Massachusetts had an interest. Although the United States obtained the consent of the States of Maine and Massachusetts to the treaty, "Lord Ashburton disclaimed all responsibility of Great Britain for any matters between the United States and the individual States referred to in that article, upon the grounds that it was an internal matter and did not concern Great Britain."

Vattel and Polson's International Law, page 155, says:

"The sovereign is he to whom the nation has intrusted the empire and the care of the government; she has invested him with her rights; she alone is directly interested in the manner in which the conductor she has chosen makes uses of his power. It does not, then, belong to any foreign power to take cognizance of the administration of that sovereign, to set himself up for a judge of his conduct, and to oblige him to alter it. If he loads his subject with taxes, and if he treats them with severity, the nation alone is concerned in the business, and no other is called upon to oblige him to mend his conduct, and follow more wise and equitable maxims."

This quotation from Vattel can very well be applied to the position taken by counsel for appellee in asking this court to enter into an investigation of the relations between the State of Sonora and Santa Anna's dicta-

torial government. If the decree of November 25, 1853, which was in full force and effect pending the negotiations and at the conclusion of the treaty and the exchange of ratifications, damaged or injured any of the subjects of that country, either individual or municipal, it is a matter to be settled between them. It is true we received the property subject to such private rights as that government itself recognized, and none other, and the whole controversy can be embodied in this proposition, the answer to which is the decree of Santa Anna of November 25, 1853.

Vattel and Polson's International Law, page 164, says:

"The domain of the nation extends to everything she possesses by a just title; it comprehends her ancient and original possessions, and all her acquisitions made by means which are just in themselves, or admitted as such among nations, concessions, purchases, conquests made in the regular war, etc. And by her possessions we ought not only to understand her territories, but all the rights she enjoys."

"Even the property of the individuals is, in the aggregate, to be considered as the property of the nation, with respect to other States. It, in some sort, really belongs to her, from the right she has over the property of her citizens, because it constitutes a part of the sum total of her riches, and augments her power. She is interested in that property by her obligation to protect all her members. In short, it cannot be otherwise, since na-

tions act and treat together as bodies in their quality of political societies, and are considered as so many moral persons. All those who form a society, a nation being considered by foreign nations as constituting only one whole, one single person—all their wealth together can only be considered as the wealth of that same person. And this is so true, that each political society may, if it pleases, establish within itself a community of goods, as Campanella did in his republic of the sun. Others will not inquire what it does in this respect; its domestic regulations make no change in its rights with respect to foreigners nor in the manner in which they ought to consider the aggregate of its property, in what way soever it is possessed."

In order that we may fully understand the effect of Santa Anna's decree of November 25, 1853, we should examine the decree of July 7, 1854, which provided for an investigation by the national government, through its proper departments and officers, of the conditions of the titles issued subsequent to September 1821, and providing a means by which titles which had been declared unlawful by his decree of November 25, 1853, might be validated and the persons holding the same protected in the possession thereof. In other words, his evident purpose was a commendable one to separate property claimed as private property from that which was purely national property. These two decrees taken together are a species of laws which this government has often resorted to in order to settle and

quiet titles to lands, and no better illustration can be found than in the act under which we are now operating. After Santa Anna had been deposed, these two decrees were recognized by the succeeding government by a decree of August 20, 1855, extending the time for presentation of titles for confirmation under the law of July 7, 1854. On December 3, 1855, President Alvarez repealed the two Santa Anna decrees, and President Comonfort on October 16, 1856, again denounced said decrees by declaring them void and making Santa Anna and the governors of the various departments responsible with their property for the damages they might have caused in the execution of the same. These two repealing and denunciatory laws may have become effective in the Republic of Mexico, but until they were promulgated, the decrees of Santa Anna and President Carrera were the laws of the country, bound the subject, bound the nation, and under such laws and declarations, Sonora was dismembered and dominion transferred to the United States.

Although these decrees promulgated by Santa Anna were not embodied in the treaty, yet, from another point of view, they may be said to be a construction by the Chief Executive of that country of the right of the States to have made any grants at all. In other words, it is a declaration of the executive and judicial power of that government, which, although it may not be ab-

solutely binding upon us, had the force of law in that country, and in construing the treaty and protecting property rights, should be noticed judicially and given as full force and effect as if embodied in such treaty. In adjudicating rights to private land claims under the various Acts of Congress to settle them, this court has always held that it will take judicial notice of the laws of the country from which the property was acquired. Therefore, in construing the treaty, it must be done with reference to the construction placed upon the laws of that country by the authorities of that country of which we take judicial notice. Although the construction placed upon them at the time may have been afterwards disaffirmed, yet such construction did exist at the time of the transfer of the property, and that construction should be followed in enforcing the rights under the treaty made at the time, and no subsequent reversal of such construction can affect us in determining these questions. In other words, we will not follow that government in the various constructions given to its laws subsequent to the treaty. By the law of nations, a change of government does not affect existing rights of property, but where these rights of property have been construed and fixed by the treaty-making power at the time of the treaty, we will take such construction as being binding upon the subject and upon us.

Therefore, it seems to me, unless we are going to enter into the local and political controversies in that country, we must decline to recognize any title that might have been issued by the State of Sonora which had not received the assent and approval of the national government prior to the treaty; and I insist no assent or approval has been shown.

As to the second proposition, independent of the declaration made by Santa Anna on Nov. 25th, 1853, I contend that the public lands were never the property of the States and were never granted to them by any constitution of Mexico or by any law or decree promulgated by that government, and that the declaration made by Santa Anna was historically and legally correct.

In order that we may trace the history of the title to the public lands and the various forms of government that obtained in Mexico from time to time, I start with the original proposition that the lands in New Spain belonged to the King and were administered by him through (Orozco, Vol II, page 769):

- 1st. The Military Chieftains of the Conquest.
- 2nd. The Royal Audiences.
- 3rd. The Viceroys and Captains-General of the colony or their deputies.
- 4th. The judges of exclusive jurisdiction over sales and compositions of lands and waters.
- 5th. The Royal Intendants.
- 6th. The Assemblies or municipal *ayuntamientos*.



Various changes were made from time to time as to the supervision of the passage of final title from the crown, but there was one principle running through all, and that was that the colonial officials who were authorized to initiate, could never pass final title without the prior approval and ratification of some superior official or official body. Thus, (Orozco, Vol. II page 769):

"1st. Confirmation was not necessary until after the promulgation in the colony of the Royal Cedula of June 17th, 1617; or rather that confirmation was made by the viceroys, presidents of the audiences or captains-general of the colony, when it was not they, themselves, but their deputies who issued grant or composition titles (Chapt. 4th, Royal Instruction of Oct. 15th, 1754).

"2nd. Starting from this date the Royal Confirmation was necessary for the validity of primordial titles and to make this confirmation is an exclusive attribute of the Kings of Spain.

"3rd. This reservation of attributes was committed to the Royal Audiences by the instruction of October 15th, 1754 (Chap. 9th).

"4th. By article 81 of the Royal Audience of Intendants, the power to confirm titles for the grant or composition of lands was entrusted to the Superior Board of the Treasury which resides in Mexico.

"5th. By the Royal Cedula of March 23d, 1798, it was declared that the requisite of confirmation was not necessary, provided the grantees paid into the local revenue office two per cent of

the value of the land composed or adjudicated. This law was in force until the promulgation, in the colony, of the decree of the Spanish Cortes of January 4th, 1813.

"6th. This decree conferred the power to confirm grants of lands in the colony upon the provincial deputations spoken of in said decree. In this condition the ancient legislation on Royal lands, which we now call national or public lands, remained until the consummation of our independence."

This decree of January 4th, 1813, is only historically important in this case (Reynolds p. 83).

It will be observed that the Cortes by articles XI and XVII of this decree, while not abolishing the office of Intendant established by the Ordinance of Intendants of December 4th 1786, took from those officers the power to dispose of the royal lands and conferred it upon the *Ayuntamientos* (Common Councils) of the towns, and transferred from the Superior Board of the Treasury to the provincial deputations the power to confirm titles so issued, and as Mr. Orozco states in the passage herein quoted, this was the condition of the laws on the disposition of crown lands in New Spain at the consummation of Mexican independence. He further says, at page 113 of Vol. 1:

"This decree is the last legislative act we know of that emanated from the Spanish State and which treats of the matter of public lands.

"We will not detain ourselves in long com-

mentaries on this law, which is extremely clear in its recitals and purpose, and which we would, perhaps, render obscure, if we attempted to comment upon it. We will only call the reader's attention to the fact that, by Articles XI and XVII of this decree, the Cortes entrust to the *Ayuntamientos* (Common Councils) of the towns the authority to issue the property titles that are to be given for community, royal or vacant lands, and to the provincial deputations the power to approve or disapprove the corresponding concessions. From the promulgation of this law, then, the Intendants were deprived of authority to issue property titles for sales and compositions of lands, and if any of them did, after said promulgation, issue a title, that title would be radically void and insufficient to obtain property in an immovable by prescription."

However, commencing in 1805, there was carried on in Mexico a desultory but unsuccessful revolution growing out of the fact that Ferdinand VII, through the intrigues of Bonaparte, had submitted to Jerome Bonaparte being placed upon the throne of Spain. This occasioned quite a revolution in Mexico, not so much against Spain as it was against the reign of Bonaparte. However, in 1814, Ferdinand VII was returned to the throne, and, by decree issued at Valencia on May 4th of that year, dissolved the Cortes, refused to recognize the representative regime and re-established the absolute monarchy. Numerous other decrees were issued by him abolishing existing offices and officers and

restoring those that existed prior to the constitution of 1812, but, as a historical fact, none of these decrees seem to have been carried out in New Spain; the constitution of 1812 was again put in force by Ferdinand in 1820, and the then existing order of things continued, as stated by Mr. Orozco, until the Declaration of Independence, (Plan of Iguala) on the 24th day of February, 1821, and carried to a successful conclusion by the capitulation of the Capital in September, 1821, at which time, the title to the vacant public lands that had theretofore belonged to the King, vested in the new government. The form of the government subsequent to this can be stated as a constitutional monarchy, the intention being that Ferdinand VII should come to Mexico in person and assume control of the government. Failing in this, a regency was formed with Iturbide at the head. The basis of this new government was the plan of Iguala and the Treaty of Cordova which had been signed on August 24, 1821, by Viceroy O'Donoju and Iturbide, but afterwards repudiated by Spain.

The process of forming the government subsequent to the declination of Ferdinand, was upon the basis of a provisional council, consisting of thirty-six members, with a regency of five persons, with Iturbide as President. On February 24, 1822, a Congress, elected under the plan of Iguala and the principles announced in

the treaty of Cordova, assembled at the City of Mexico for the purpose of forming a constitution. A struggle commenced between Iturbide and the Congress, which culminated in the election of Iturbide as Emperor on May 19, 1822, and he was crowned on July 21, 1822: thus we have an Empire, with Iturbide at its head, by virtue of the successful revolution inaugurated in February, 1821, and to which Empire passed the title to the public lands that had heretofore been the property of the King of Spain. On October 30, 1822, Iturbide dissolved the Congress by force, and created what is called the "National Constituent Council." This Council was installed November 2, 1822. On December 5, 1822, Santa Anna, in revolution against the Empire, declared for its abolition and for a Republic, and the restoration of the powers of the original Congress. While Iturbide was still in control of the government on January 4, 1823, he promulgated what is known as the "Imperial Colonization Law." It provided for two kinds of grants of the public lands: one to promoters or impressarios, who should bring 200 families under contract with the executive, and the other to individuals, to be made by the Common Councils (ayuntamientos).

The revolution that Santa Anna had inaugurated in December, 1822, was continued, until, becoming successful, on March 7, 1823, the Constituent Congress, which had theretofore been dissolved by Iturbide, was

reconvened, and on March 19, Iturbide presented his abdication to that body, which was not allowed, but on April 7, 1823, it declared that his coronation had been an act of force and violence, and therefore void. It further declared that all the acts of the government from May 19, 1822, to March 9, 1823, were illegal and subject to revision by the new government. On April 11, 1823, by an order of this Congress, the Imperial Colonization Law, theretofore promulgated on the 4th of January, 1823, was suspended until a new resolution on the subject could be enacted: so we have the national government providing for the disposition of the public lands under the Empire, and upon its down-fall, we find its colonization law repealed and nullified until the succeeding government should pass some law upon the subject, leaving the control of the public lands entirely in the hands of those in charge of the national government, and taking away thereby the right on the part of any provincial official or official body to in any manner dispose of any of the public lands until some authority might be conferred by the national government therefor.

It is contended on behalf of the government that no legislation, orders or decrees were ever made by the national government, authorizing any provincial or Territorial official or official body to in any manner

dispose of any of the public lands until the promulgation of what is known as the Colonization Law of August 18, 1824, and the issuance of executive regulations of November 21, 1828. It is true, in the meantime the national government could have disposed of any of the public lands it saw proper, and the States, by the third article of the law of August 18th, 1824, could regulate colonization, subject to the restrictions mentioned.

It is contended by counsel for appellee that the title to the public lands belonged to the States of the Union, basing the claim, however, upon the same theory that the public lands within the original thirteen colonies of this country were claimed. It will be noted that the Mexican Confederation was formed in an opposite manner from the formation of the States of the North. Those subdivisions of Mexico that were afterwards designated States, were formerly provinces of Spain and the Empire, and created states by the Constitutive Act and Constitution (Reynolds 89, 116 and 124, ).

I think this hurried historical statement justifies the position heretofore taken by the government that the title to the public lands was never vested in the States unless it can be shown by some direct act of the national government, it was passed to them, and I am not alone in this contention. Mr. Yoakum, in the first



volume of his history of Texas, recognizes this fact. On page 230, he says:

"The Mexican Federal Constitution of 1824, about which so much has been said, was formed upon that of the United States, but with some fatal differences, among which \* \* \* were the making of Congress, instead of the courts, the final interpreter of the constitution, permitting the President, under any circumstances, to command the armies of the Republic in person, and failing to define more clearly the rights of the several States of the Confederacy. However, Congress, after a labor of five months, adopted the instrument on the last day of January, 1824, though it was not proclaimed until the 4th of October following. The newly created States also went to work to establish State constitutions and to organize under them. They labored under difficulties which the States of our Union had not to encounter. Ours were States anterior to the compact: theirs were created by it. Our States were watchful and jealous of their rights; theirs had no rights except as the national government gave them, and as the Federal Congress alone had the right to construe the constitution, the States were naturally at its mercy."

Upon this same subject, in the case of the Republic of Texas vs. Thorne, 3 Texas, 499, Justice Hemphill said:

"I shall not attempt to follow the argument in all its latitude or to define with precision the limits of the rights and powers of the federal and State governments respectively over the public

lands. But, as the subject has been much discussed, I shall consider it to some extent in connection with the special inquiry under examination. That the right of eminent domain over the public lands was originally vested in the federal government of Mexico is perhaps not now subject to question. The confederacy of the Mexican States was not formed originally by a constitutional compact between the several separate independent States, nor by a grant of the powers originally vested in the several provinces which afterwards constituted the States of the union. The public lands of the United States of the North, before the acquisition of Louisiana and Florida, belonged originally to the several States, and became Federal property by purchase or voluntary cession from the States. But, in the Mexican Union, the general government claimed originally the property in the public domain. It is true that under the former government, the provincial authorities had exercised certain powers of control over the public lands, but this was in subordination to the central or supreme authority of the country, whether vested in the Crown or represented by the Vice-Royalty of New Spain, or in the sovereign provincial governing Juntas, in the Emperor Iturbide, or the other authorities which succeeded before the assemblage of the Constituent Congress which finally adopted the federal system, and out of the municipal subdivisions of the territory, formed the States of the confederation."

Mr. Justice Hemphill also recognizes in this opinion the fact that the rights of the States to interfere or participate in the disposition of the public lands was de-

rived solely from the Colonization Law of August 18, 1824, and he says further speaking of Texas:

"Nor did she evince, until a late period of her existence, if ever, that she claimed any right or control over the public lands, except such as was conceded to her by virtue of the national law to which we have referred."

When the controversy really arose between the nation and the states as to the ownership of the vacant public lands, Texas was the most aggressive of all in asserting her right to the public lands, as well as other rights she claimed under the Constitution, and she was the only State which participated in the revolution of 1835, that was able to make her contentions good by independence. Sonora participated in this revolution, but was not able to make any of her contentions against the national government good, finally submitting to the constitution of 1836, which deprived her of her autonomy and made her as one of the ordinary departments of the national government,

But, I am not without more modern authority. In 1885, Mr. Manuel Inda, a lawyer of very high standing and reputation in the City of Mexico, and also a member of Congress at the time, at the instance of the President was requested by the Minister of the Department of Public Works, having control over the public lands, to give his opinion as to the status of the public lands in the States, and in the course of quite a

lengthy opinion upon the formation of the Republic and the original status of the public lands, says:

"The principal that among people governed by the federal system the National territory is formed of all and of each one of the integral parts of the Federation and controlled exclusively by the Powers of the Union cannot be proclaimed under a clearer form nor be drawn up with more conciseness. And let it not be forgotten that the American people of the north, when they established the basis of their confederation through their delegates, and when they discussed and voted for their constitution through their representatives, were organized in colonies entirely free and independent of each other, while, on the contrary, the Mexican Nation which, during the course of three centuries was subject to a single regimen, received the same impulse and obeyed the same mandates, had to proceed in an inverse sense to that in which the American nation proceeded; that is, instead of uniting themselves, it had to divide itself in a political sense, and nothing more; and for this reason it is natural and logical that it should maintain its territory complete under the sole control of the Federal Powers."

It seems to me there can be no substantial controversy as to the fact that upon the formation of the Republic under the Constitution of 1824, the vacant public lands belonged to the nation, whether situated in any of the States or Territories, and it devolves upon those who seek to sustain grants made by the officials of a

State to show the act of the national government that passed the title from the nation to the State.

*U. S. vs. Hartnell's Exrs.* 22, How. 288.

The only place I can find any authority for the States to interpose in the disposition of the public lands lying within their boundaries is the third article of the Colonization Law of August 18, 1824 (See Reynolds' Spanish and Mexican Land Laws, p. 121), and this is the article upon which Texas based its claim to dispose of the public lands lying within that State. With all the bright men that were in Texas reaching and grasping for an opportunity and excuse to break away from a government with which they were not in sympathy, it never occurred to any of them to claim that the revenue law of August 4, 1824 (Reynolds, p. 118), gave them any authority or control over the public lands, and I know of no State in the Republic of Mexico, except that of Sonora, that has ever claimed any right to the public lands, or the right to dispose of them on behalf of the nation, under the terms and provisions of this law. It is apparent on its face that it was purely and simply a revenue law, and never was intended to reach the public lands, which had been reserved more for the purpose of colonization than for the purpose of sale for revenue. We find, in the preamble to the *testimonio* offered in evidence, a recital of the authority under which the officials who pretended to extend this grant were acting.

They made no pretense to act under and by virtue of an original title in the State, but by virtue of a title having been granted to it by the terms of the law of August 4, 1824, thereby recognizing that if they had the right to dispose of the public lands at all, it must have been by virtue of some authority theretofore conferred by the national government.

This law classifies the revenues that are reserved to the national government, leaving the remainder to be utilized by the States. It has been contended, because of the fifteenth article of this law, apportioning the amount that each State should contribute to the national government, that therefore, in order to raise this money, it was intended that they should have the right to sell the public lands within their boundaries for that purpose. Such a contention can not be well sustained, for the reason that this apportionment was a direct tax levied by the national government upon the States, something similar to our direct tax, and there could be no good reason why the national government, if it was going to dispose of the public lands for the purpose of revenue, should delegate to the various States the authority to do this without fixing a minimum price or providing for the sale directly by federal officials. The first ten articles of this law define the revenues that are reserved to the national government. The eleventh article says: "*The revenues not included*

*in the foregoing articles belong to the States."* It will be noted that the ninth article of this law is as follows:

"National property, in which is included that of the Inquisition and temporal property of the clergy, or any other rural or urban property that belongs, or shall hereafter belong, to the public exchequer."

It seems to me that if the vacant public lands were in any way the object of any of the provisions of this law, this article would reserve them to the national government, although I am perfectly satisfied that the vacant public lands in the States were not the subject directly or indirectly of this law.

Mr. Orozco in his work on "Legislation and Jurisprudence on Public Lands," published by authority of the Minister of Justice and the President in 1895, v. 1, p. 192 et seq., in discussing this question under the laws of August 4 and 18, 1824, says:

19. \* \* \* \* \* *as the summum imperium, the eminent dominium* over the territory belongs to the very essence and nature of sovereignty, and as the national sovereignty resides not in the States, but in their federation, the organ of that sovereignty, recognized by foreign powers, it cannot be supposed that the nation would surrender any part of what constitutes the essence of its sovereignty, except by means of an explicit and express constitutional law."

It is true, that under the first three articles of the law of August 18, 1824, the States did have the right



to pass laws for the colonization of the public lands within their boundaries, subject always to the control of the national government; but, in doing so, they were not the owners of the land, but were given permission to regulate those who might become citizens of the State by having delegated to them the power to dispose of for the nation, for the purpose of colonization alone, the vacant public lands within their boundaries. I do not believe that it was ever intended by the national government that the States should dispose of the public lands under this law for the purpose of revenue, but that the principal consideration that was to pass for lands was colonization, improvement and cultivation, populating and settling the country with industrious and thrifty people, if it was possible to do so.

It will be noted in the preamble to the *testimonio* of this grant, there is the following recital (R. 7):

“Jose Justo Milla, propriatory auditor of the general treasury of the free, independent and sovereign State of Sonora, encharged with the said office by the laws:

“Whereas Article II of the sovereign general decree No. 70, of the fourth of August, 1824, conceded to the States the revenues (rentas) which by said law are not reserved to the national government, one of which is the vacant land in the respective districts pertaining to the same, in consequence of which the honorable constituent congress of Sonora and Sinaloa passed the law, No. 30, of

the twentieth of May, 1825, and also subsequent legislations passed other decrees concerning the same matter, which dispositions have been embodied in sections 3, 4, 5, 6, and 7 of chapter 90 of the organic law of the treasury No. 26, of the 11th of July, 1834.

"And Don Fernando Rodriguez, a resident of Hermosillo, having made formal application to this general treasury department for the registry of certain vacant and desert lands contiguous to the Gila and Colorado rivers, in the northern part of the state, the corresponding *expediente* was made out, in strict accordance with the laws."

Yet, at the time this preamble purports to have been written the State of Sonora had surrendered its autonomy to the national government under the constitution of 1836. Texas is the only state of the Mexican Republic that did not submit to this constitution and did not surrender her autonomy. From that time, until 1846, the Mexican laws, decrees and official circulars never referred to the *States* except in matters of past events. They were all created *Departments* of the national government. Those subdivisions that had formerly been territories were also created Departments, and their official status and official dignity was equal to the Departments that had formerly been States. They were all Departments, subject to the same laws and to the same control, and having identically the same rights, whereas formerly there was a marked distinction between the rights of the States and the

rights of the territories. Therefore, by virtue of this change in the form of government and change of political status of the States and territories towards the national government the laws that had theretofore been in force in the territories and in the States could not well be carried out. The law of August 18, 1824, must of necessity have been repealed by virtue of the constitution of 1836, and the law of August 4, 1824, must have suffered the same fate by reason of the laws of April 4th and 17th, 1837. The powers and duties of the governors of the various Departments, were defined and restricted by the constitution (Reynolds, p. 205). It will be noted that in defining the powers and duties of the governor, no mention is made of his right to grant the public lands in the Department. So careful was the national government in defining the powers of the governors of the various Departments that it was provided in section three of article fifteen (Reynolds, 208) that "they cannot exercise other powers than those which this law designates for them, the violation of this part of the article and the two preceding ones being a matter involving the strictest responsibility." It will thus be seen that under this constitution the law of August 18, 1824, and the executive relations issued thereunder of November 21, 1824, could not be carried into execution. Immediately following the constitution there were laws passed providing for the

disposition of the public lands in the various departments which were inconsistent with any of the laws of the national government or of any of the States that had theretofore existed, and to which, later on, we will have occasion to make specific reference.

It has further been contended that the title to the public lands was vested in the States, and that by the abolition of the States under the constitution of 1836, the title did not revert to the national government, but remained in the Departments to be disposed of as they saw proper. This contention, admitting for the sake of argument that the title was in the States, cannot well be sustained for the reason that the Departments were in all respects subordinate to the national government, and the machinery provided by the laws of the States, particularly the State of Sonora, for the disposition of the public lands, could not be well carried into execution. If the title remained in the Department, it remained there subject to the control of the national government, for the disposition of which, without recognizing the rights of the Department thereto, it passed various laws from time to time.

It has also been contended that law No. 30, of May 20, 1825, provided for the disposition of the lands as the property of the State, and that this law was never revoked by the national government, and hence it was a recognition by the national government of the right

of the State of Sonora to pass the same and to dispose of the public lands thereunder. When we take into consideration the revolutionary condition of Mexico, the fact that Sonora like Texas was a long way from the Federal district, and the inability of the government to hold the States in subjection, and having by the third article of the law of August 18, 1824, given the States the right to pass laws regulating colonization, it is not to be wondered at that no intervention was made on behalf of the national government at that time.

We find on April 6, 1830 (Reynolds, 148), a decree in relation to colonization and commerce, the third article of which is as follows:

*"Art. 3. The government shall have power to appoint one or more commissioners to visit the colonies of the frontier States, to contract with their legislatures for the purchase, in the name of the Federation, of the lands they may consider suitable and sufficient for the establishment of colonies of Mexicans and of other nations, to enter into such arrangements with the colonies already established as they may deem proper for the security of the Republic, to see to the exact compliance with the contracts upon the entry of new colonists, and to examine as to how far those already entered into have been complied with."*

This is an evident attempt to peacefully withdraw from the States, not the ownership of the lands, but the right to pass laws regulating colonization under

the law of August 18, 1824. It was becoming apparent, on account of the controversies in Texas, that the local authorities were using the Colonization Law for the purpose of encroaching upon the rights of the national government, and to assume to themselves absolute ownership and dominion, irrespective of the rights that they had really obtained by virtue of the third article, and it became necessary for the national government to peacefully, if it could, withdraw the rights theretofore conferred. Subsequent history informs us that this attempt was futile, and the revolution of 1835 resulted in the forcible withdrawal of this right and the abolition of the States and State governments.

A further encroachment was made by the State of Sonora in 1834, when the law of May 20, 1825, was modified by the act of July 11, 1834 (Reynolds, 186). Neither of these laws provided for the form of title such as has been executed in this case. I know of no reason for objecting to this form of title, as it was probably a form used prior to independence under the Intendentes, and did not derive its legal sufficiency or validity, as a matter of form, from the law of Sonora or the law of the national government. It does provide for the three almonedas, such as used in this case, but I know of no national law which provides for any such manner of sale. Therefore, this title, as a matter of

form and execution, could not fall under the provisions of any law of the nation, and must rest solely for its validity upon the law of the State of Sonora, of July 11, 1834, which law, I contend, was not in force in the Department of Sonora subsequent to the Constitution of 1836.

The act creating the Court of Private Land Claims, section 13, provides:

"That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to other provisions of this act, namely:

"*First.* No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico, having lawful authority to make grants of land," etc.

I contend that this grant, made on April 12, 1838, was not lawfully and regularly derived from the Republic of Mexico, and that it was not derived from any State of the Republic of Mexico for the reason that the States had been abolished by the Constitution of 1836.

It is contended by counsel for appellee that on May 20, 1825, the Congress of the State of Sonora and Sinaloa passed a law providing for the sale of the vacant public lands of the State, and at the time of the adoption of the constitution of the State in November, 1825, a declaration of ownership of these public lands was ex-



pressly embodied in that instrument. I must take issue with this statement as a matter of fact, and refer to the translation of the constitution of the State, found on page 127 of the printed record, introduced in evidence by the appellee:

"Article 1. The State of Occident and its territory is composed of all the towns embraced by that which was formerly called the intendency and political government of Sonora and Sinaloa. A constitutional law shall fix its limits.

2. In that which exclusively pertains to its internal government it is free, independent, and sovereign; and in that relating to the Mexican federation, the State delegates its powers and rights to the Congress of the Union."

I contend that this is not a declaration of the ownership of the vacant public lands lying within the boundaries of the State of the Occident, but only declaring the territory to be that which was formerly included within the intendency and political government of Sonora and Sinaloa. The only reference in this constitution, which I can find, that gives the congress of the State any power to legislate upon the vacant public lands, is the 20th article of the eighth section, defining the powers of Congress and its permanent committees, as follows (R. p. 129):

"20. To make rules for colonization in conformity with the laws."

I have examined this Constitution with a great deal

of care, with a view of determining what declarations were relied upon to sustain the statement and contention of counsel, and it seems clear to me that the States at that time claimed no right to dispose of the public lands, except for the purpose of colonization, such as was authorized by the National Colonization Law of August 18, 1824. It appears from section 16 of this Constitution (R. 129) that no claim was made directly to the public lands under the act of August 4, 1824, and, unless it can be said that the national government, by the Colonization Law of August 18, 1824, had granted to the State the title to the public lands, the authority for such claim cannot be found.

The testimony taken by appellee of legal experts can well be referred to at this time. Mr. Castaneda, a lawyer by profession, stated that he had made a special examination of the laws relating to the sale and granting of land by the State of Sonora since 1824 (R. 111-112), and that the State of Sonora had ample power and authority to dispose of its public lands in the manner provided by its own laws, and further, says the reason is that the State of Sonora did not have its sovereign rights limited only as far as the authority and rights it delegated to the congress of the Union, and this is proven by article first, second, 109, section 31, article 293, of the constitution of the State of 1825. Referring to these articles in the constitu-

tion, found on pages 127, 128 and 129 of the printed record, I am at a loss to understand how he reaches such a conclusion. We know, as a historical matter, that the States derived their rights as such by the national government dividing itself into States and conferring such powers and authority upon them as it saw proper, and no more, and reserving to itself all rights not delegated.

It is evident that Mr. Castaneda belongs to that political school in Mexico, which has been unsuccessful in the attempt to subordinate the national government to a compact of confederation between the provinces, instead of the centralized school which has always and to-day predominates; the peculiar population could not maintain a personal government by the people in the sense that we understand it. The government of Mexico at no time since independence has ever been, nor is it now anything less than one absolutely subordinate to the administration in all respects, and when an attempt even at the present time is made to assert the right to oppose the continuation of the present officials in office, the opposers are declared and treated as rebels against the government.

He also testified that the State of Sonora did pass laws for the disposition of the public lands within its boundaries, and that those laws were never nullified by the national government. It

had authority under the third article of the Colonization Law of August 18, 1824, to pass laws for the colonization of the public lands lying within its boundaries, and it can well be inferred that its laws for the disposition of the public lands could have been sustained under that article, but when we come to investigate the manner of the execution of the laws, they were so much at variance with the letter and spirit of the idea of colonization that they were unable to justify it themselves, and when called to account by the Mexican government, as all of the States were about 1830, they undertook to justify this variance from the principle of colonization by claiming that the eleventh article of the law of August 4, 1824, gave them the right to pass laws for the sale, for revenue, of the public lands within their boundaries, without any control, supervisory or otherwise, on the part of the national government. I have stated before that Sonora was the only State of the Mexican Republic which ever made this contention. The State of Coahuilla and Texas relied for its authority, not upon its original ownership of the land or the law of August 4, 1824, but simply upon the colonization law of August 18, 1824. The State of Chihuahua did the same thing, as also did the State of Durango. Further on in his testimony, (R, 112), he states:

"The only limitation that the States had to dis-

pose of its public lands is that of not being authorized to colonize them, except under the basis that the decree of 18th of August, 1824, establishes; but this decree refers exclusively to colonization. By colonization, I mean to give them and to establish there what we understand a colony or union of individuals that come from other parts to settle. But that law did not prohibit absolutely the State to sell us Mexicans any of that land. This is confirmed by the fact that the Congress of the federation declared null some of the dispositions of the State on colonization, notwithstanding it did not declare null the laws of the same State, in virtue of which it disposed of said vacant land in other ways. (Decree of 21st of February, 1824, which declared null a decree of the general legislature of Coahuilla and Texas on account of having been enacted on colonization. Decree of 14th of May, 1851, which declared null a decree of the legislature of this State of Sonora on colonization.) From these decrees deduction is made that the limitation on the State only refers to colonization, and that they could dispose of it in other ways—its public lands. That all this is confirmed by our public right, according to which no one doubts the validity of the alienations as that of the Algodones —.”

This opinion clearly disclaims the fact that the laws of the State of Sonora of 1825 and 1834 were passed for the purposes of colonization, and therefore, could not come within the authority granted by the third article of the Colonization Law of August 18, 1824, which he practically admits, but falls back upon the broad

proposition that the lands always belonged to the States, and that the eleventh article of the law of August 4, 1824, was sufficient authority for them to undertake to pass laws for the sale and disposition of the public lands in any amount and for any purpose they might see proper.

Admitting for the sake of argument that his position as to the ownership of the public lands is correct, yet I do not see how he is going to sustain the position after the promulgation of the constitution of 1836. That constitution was signed by F. G. Conde, for the Department of Sonora, and his signature can be found on page 217 of the *Leyes Fundamentales*. Admitting also for the sake of argument that the title to the public lands, upon the abolition of the States and the creation of the Departments, vested in the Departments, still, under the new constitution and new form of government, centralized as it was and intended to be, the disposition of the public lands would be necessarily under the control of the national government. The officers were not officers of the State, although they might formerly have been so, but they were purely officers of the national government, carrying into execution national laws.

Mr. Castaüeda, further on in his testimony says (R. 114), that this title was issued in 1838 under and by virtue of the laws of the State of Sonora. He also

states on cross examination (R. 114) that Sonora was a Department of the national government from 1836 to 1857 and from 1853 to 1854, necessarily implying that in 1838, at the time this grant was made, Sonora was a State. I embody in this brief the examination of Mr. Castaneda by Mr. Justice Sluss of the Court of Private Land Claims and call particular attention of the Court to the same (R. 115):

"Q. 6. I call your attention to the expression in article 3 of the law of August 18, 1824, as follows: 'conforming themselves to the regulations established in this law', and ask you, in your opinion, whether that would include the provision of section 11, to the effect that no person should be permitted to receive more than eleven square leagues of land?

"A. This law refers exclusively to colonization; that is to say, it prohibited the States to give more than that expressed in article 12 to the colonists that come to settle the vacant lands, but it did not limit the authorization or power which the States had according to their own laws to sell to any Mexican a large extension of land.

"Q. 7. In view of the opinion you have given, what is your construction of the provision of section 9, to the effect that preference should be given in the disposition to Mexican citizens?

"A. This law, as I have already expressed, refers to colonization, and in article 9th refers to the preference that shall be given to the Mexican citizens when they shall have come to form colonies in the State of Sonora, or any other State.



"Q. 8. Is it not a fact that the title to all the vacant lands as between the State and the Federal Government was originally vested in the Federal Government?

"A. From the moment that the nation entered into the federal system that right originally belonged to the States as owners of their own territory, in the quality of free, independent and sovereign States, with no further limitation than the powers and rights delegated by the States to the Congress of the Union.

"Q. 9. By what instrument were those powers and rights delegated to the Federal Government?

"A. By the federal constitution and also by the laws enacted by the Constituent Congress, among which is found that of August 4, 1824, in the part of which refers to lands, and that of the constitution of the State, 'section' 16th, article 293, page 84, which says: 'The revenues which the federal government did not reserve for itself by decree of classification of 4th of August, 1824, are those that, until this date, have formed the elements of which the treasury of the State is composed of.' The date of this constitution is 31st of October, 1825, and published on the 2nd of November, of the same year.

"Q. Had the State the authority to absolutely alienate its land without the consent of the Federal Government?

"A. It had."

Mr. Castaneda says with reference to the third article of the Colonization Law of August 18, 1824, that it refers exclusively to colonization and not to sales such as

this. It will be noted in his testimony (R. 112), that the colonists who were to be settled under this law, according to his construction, were to be foreigners, although the term is not used, and Mr. Justice Sluss evidently understood the witness to place that construction upon the law. And yet a preference, for the purpose of colonization, by the 9th article of the law of August 18, 1824, is given to Mexican citizens, and the twelfth article, referred to by Mr. Justice Sluss in his question, is the one limiting the power to unite in the hands of one individual more than eleven leagues of land. It would seem strange that the Mexican nation, preferring its own citizens who sought to colonize the vacant lands of the country, should limit the uniting in the hands of one individual more than eleven leagues, and yet permit the States to sell to one individual, at any price, any quantity of land it might see proper, for any purpose. Yet, we know historically, that the attempt by Texas to dispose of 400 leagues of land resulted in a revocation of the grant by the national government, and was one of the inducing causes that led to the revolution resulting in its independence. Mr. Castaneda is thrown upon the broad proposition, as he states, that the States always did own the property in the public lands, which I contend cannot be maintained. The best evidence of the fact that such a contention was of modern origin is the first three articles of the law of

August 18, 1824 (Reynolds, p. 120), which are as follows:

"Art. 1. The Mexican nation offers to foreigners who may come to establish themselves in its territory, security in their persons and in their property; *provided*, they submit to the laws of the country.

"2. The object of this law is those lands of the nation, which not being private property nor belonging to any corporation or town, can be colonized.

"3. For this purpose the Congresses of the States shall enact, as soon as possible, laws or regulations for the colonization of their respective demarcations, in strict conformity with the Constitutive Act, the general Constitution and the rules established in this law."

It will be noticed that the second article specifically says that the object of this law is "*those lands of the nation (terrenos de la nacion) which not being private property nor belonging to any corporation or town, can be colonized.*" It seems to me that this declaration is the most pointed and direct that has been made in any of the constitutions or laws of the State or nation as to the ownership of the vacant public lands lying within the States, and it therefore appears to me, that this grant cannot be maintained by virtue of its being a State grant, and it must rest solely and alone upon the act of the officers who made it for its validity on national authority. When Santa Anna announced that

the claim made by the States to the public lands and their attempted disposition of the same without the approval or consent of the national government were void, he decreed that which was in harmony with history and prior legislation.

The constitution abolishing the States and creating Departments was promulgated in December, 1836, and about a year subsequent thereto, a revolution was commenced in Sonora, headed by General Urrea, who was the governor of the Department of Sonora at the time, and the State Congress, which had been abolished by the constitution of 1836, was reassembled, and the State government attempted to be put in full operation under the State constitution of 1825 and the laws enacted thereunder, all in opposition and direct defiance of the national government. During this time they did not pretend to execute the national laws. They were in secession against the same. They did not pretend to act under the existing national government, but in opposition thereto, and did not pretend that the grants of land that were attempted to be made under the State laws were made by virtue of any authority derived from the national government, but by virtue of original title in the State (see testimony of Mr. Robinson, R. 104.5). If the officials of the Department, headed by Governor Urrea, were in rebellion against the national government, I contend they *ipso facto* forfeited all right

or power to execute or carry into effect the laws of the national government against which they were in rebellion. That rebellion was unsuccessful, and instead of getting back to the national constitution of 1824 and the State constitution of 1825, they were carried still further into a centralized and dictatorial form of government by Santa Anna under the Bases of Tacubaye in 1841. During the secession of the State of Sonora, all of the acts of its public officials, in disposing of its public lands, were void under the laws of the former State of Sonora and under the laws of the nation as they existed at the time, and no act of theirs during this time can be sustained until it is clearly shown that it was subsequently confirmed or ratified by the national government.

Sonora was a Department from 1835 to 1846, a period of eleven years, and had no rights except those conferred upon it by the national government, and its officials had no authority except that conferred by the national government, and they had no right to exercise that authority at any time they were in rebellion and revolt against the government and its laws as they then existed; and I therefore submit that the act of these officials can not be sustained under the State law or under the national law; I care not whether in the grant the recital appears, "By these presents and in the name of the free, independent and sovereign State of Sonora,

as well also of that of the august Mexican nation, I confer, concede," etc. They were acting in violation of both.

I submit that the grant attempted to be made as a State grant, can not be sustained. I further submit that the grant as a national grant can not be sustained: first, because the officers were in rebellion against the national government and had no authority to execute the laws of the nation so as to deprive it of its property; secondly, because the same was not made in conformity with the laws of the national government upon that subject, which I will undertake to demonstrate later on.

In addition to what has been said, I submit that this grant cannot be sustained under the laws of the nation. I understand that it is contended on behalf of appellee, that although the grant might fail as a State grant, yet the officials who made it had authority to do so under the laws of the nation, and that they have so far complied with those laws in the execution of the grant, as to at least vest an equity in the original grantee.

It is not contended that any possession, either juridical or otherwise, was delivered to the original grantee or any one for him, prior to the treaty.

Mr. Justice Field, in the case of *Graham vs. U. S.*, 4 Wallace 259, 261, speaking of the act of juridical possession, says:

"The Mexican law, as well as the common law, made a formal delivery of possession, or livery of seizin of the property essential, after the execution of the grant, for the investiture of the title. This proceeding was usually taken by the magistrate of the vicinage with assisting witnesses in the presence of adjoining land proprietors, who were summoned for the occasion."

My conclusion from that statement of the law is that the last act that is to be performed in passing to the grantee a complete and perfect title, is the delivery of the possession after all proceedings have been concluded by the officials of the government, and in order that we may make no mistake about it, I desire to submit in chronological order, the laws of the nation in relation to the disposition of the public lands, commencing with the repeal of the Iturbide law on April 11, 1823.

The Constitutive Act, which was the constitution of the provisional government until the promulgation of the general constitution, was adopted on January 31, 1824, (Reynolds, 116). Article one of that act provides:

"Art. 1. The Mexican nation is composed of the provinces comprised in the Viceroyalty formerly called New Spain, in what was called the Captaincy General of Yucatan and in the Commandancies General of the Internal Provinces of the East and of the West."

Article seven designates the parts of the confederation that were to be States:



"7. The States of the Federation for the present are the following: Guanajuato, the Internal State of the West, composed of the Provinces of Sonora and Sinaloa; the Internal State of the East, composed of the Provinces of Coahuila, New Leon and Texas; the Internal of the North, composed of the Provinces of Chihuahua, Durango and New Mexico; Mexico, Michoacan, Oaxaca, Puebla de los Angeles, Queretaro, San Luis Potosi, New Santander, which shall be called Tamaulipas, Tlaxcala, Vera Cruz, Jalisco, Yucatan, the Californias, etc."

The internal State of the West was composed of the provinces of Sonora and Sinaloa. The Internal State of the North was composed of the provinces of Chihuahua, Durango and New Mexico. So that, prior to the constitutive act, Sonora and Sinaloa were not treated as States, but as provinces, and they were by said act created the State of the West. During the process of the formation of the constitutions of the nation and the States, under the constitutive act, it was necessary for the general government to determine what revenues it was going to reserve, and what it was going to permit the States to appropriate. This resulted in the passage of the law of August 4, 1824 (Reynolds, 118). Sonora and Sinaloa was the only State of the Mexican Republic that laid hold of the eleventh article of this law as the authority for claiming the ownership of the public lands within its boundaries. In order that some provision might be made

by which the public lands of the nation could be colonized and settled, the Constituent Congress, on August 18, 1824, promulgated what is known as the Colonization Law (Reynolds, 121), and it is apparent from the first, second, third, ninth, twelfth and sixteenth articles of that law, it granted to the States the right to pass laws regulating the colonization of the lands of the nation lying within their boundaries, subject to the restrictions of the law, the constitutive act and the general constitution, reserving to the chief executive of the nation the right to promulgate rules and regulations for the colonization of the public lands lying within the territories, and carrying out the power given to the chief executive in article 16. He did on November 21, 1828, promulgate regulations for the colonization of the territories (Reynolds, 141). Coahuila and Texas and Chihuahua and various other States of the Union immediately passed colonization laws under the powers granted them by the third article of the law of August 18, 1824, and proceeded in harmony, so far as the letter of the law was concerned, with the restrictions imposed. Sonora and Sinaloa proceeded to pass a law for the disposition of the public lands, and in that law of May 20, 1825 (Reynolds 129), made no reference by virtue of what authority the State assumed to regulate the disposition of the public lands, and so far as the letter of the law itself is concerned, it might well

have been overlooked by the national government, assuming that it was at least an attempt at colonization, rather than an appropriation of the property to itself for the purposes of revenue. Sonora, having been separated from Sinaloa, re-enacted the law of May 20, 1825, with some changes, by a decree of the congress of the State on July 11, 1834 (Reynolds, 186), but in this law, it does not appear by virtue of what authority derived from the national government, it was passed, unless, as in the other law, it can be assumed that it was under article three of the colonization law of August 18, 1824. These two laws, it will be observed, were purely and simply State laws.

On January 26, 1831, the national government passed a law (Reynolds, 151) creating a general department of revenues and providing for the making of regulations for its government, articles one and twenty-two of which are as follows:

Article 1. A general department of revenues is established, under whose control shall be all branches of the treasury which are administered for the federation, except the general administration of the mail and that of the mint.

\* \* \* \* \*

22. This decree shall not go into effect until those that regulate the general treasury and the commissaries are promulgated.

On May 21, 1831, a law was passed creating the office of Commissary General (Reynolds, 153). And on

July 20, 1831, regulations were passed which had been provided for by article 22 of the law before referred to (Reynolds, 157). The articles of the latter, to which we respectfully call attention, are 126, 127, 128, 129, 130, 131, 132 and 133, which are as follows:

126. All purchases, sales, and contracts made on account of the treasury, whatever be their purpose, shall be made by the commissaries-general sitting as boards of sale; but before convoking them it shall be absolutely necessary to receive first the order therefor, either from the supreme Government, communicated directly or through the treasury-general, or rather from the directory of revenues, when it relates to matters subject thereto.

127. Said board shall hold its sessions in the room most suitable for the purpose in the commissariats, or in the public place nearest to those offices, and the regular members shall be the commissary or sub-commissary, who shall preside, the senior officer of the treasury, or the one who acts in his stead, and the attorney-general, where there is one, and each of these employees shall take the place or seat to which he is entitled in the order in which they are named.

128. Besides the regular members, there shall be special members, depending on the sale, purchase, or contract being made, for, when it relates to the offices or revenues in the federal district which are subject to the director general; the auditor in charge thereof shall attend, and if subject to any of the other departments, the chief clerk of the bureau of accounts and records of the

department of the treasury. If it relates to supplies for army service, the officer appointed by the proper inspector shall be present; if to business pertaining to the artillery arsenals or factories connected therewith, the chief officer thereof; if to hospitals, the first assistant of the medical corps; if to fortification works, the chief of the corps of engineers; and if, finally, to other matters, the employee of the nearest related department appointed by the commissary-general, who shall give timely notice to the regular and special members of the day and hour of the sale, which ordinarily shall be at 10 o'clock in the morning.

When military officers, auditors of the director-general, and the chief clerk of the bureau of accounts and records attend as members they shall take seats in the board next after the commissary general.

129. In the other commissariats or sub-commissariats the chief officer of that department of the revenue in question, if he has his residence there, shall be a special member of the board of sale in matters relating to the revenues; so also the persons referred to in the preceding article in their respective cases or their chief clerks. In contracts relating to the army the commissaries or sub-commissaries shall give notice to the general or subordinate commanding officers to appoint the chief officer or subaltern who is to be present.

130. If there is a notary public in the place, he shall necessarily be present at the sessions of said board, and whatever is done therein shall be certified to by him, or by two attending witnesses, in case there is none.

131. That there may be occasion for holding said sessions, the sales or purchases intended to be made shall be published for at least eight days before hand by placards, which shall be put up in the most public and frequented places, and they shall be inserted in the newspapers of greatest circulation, if there be any in the place, the commissaries being careful that such notices contain the necessary information about the matter and its most essential circumstances.

132. When the sale is opened, and the customary proclamations have been made, all lawfully made bids shall be received until the day of final sale, which shall be made to the bidder who offers the most advantages to the treasury, as determined by an absolute majority of the votes of the board, which minute and everything that may have occurred at the sale shall be entered on the book, which the commissaries and subcommissaries shall keep for the purpose, and which the members shall sign with attending witnesses or with the notary, who, besides, shall draw up all other necessary papers. In the absence of the notary, a clerk, whom the commissary-general shall bring for the purpose, shall draw up the minutes and the conclusions.

133. After the legal term has expired the commissaries and subcommissaries shall forward the proceedings with their report thereon to the supreme government, *without whose approval the purchase, sale, or contract shall not be carried into effect.*"

By these regulations it will be seen that the machinery was provided by means of which the govern-

ment might sell the property of the nation for the purpose of raising revenue, and this law, although it may not directly repeal the Colonization Law of August 18, 1824, because it being one for revenue, and the other being purely and simply for colonization, yet it was inconsistent with the laws of the State of Sonora, under which the State was attempting to sell property for the purpose of revenue and not for colonization.

On March 14, 1835, the legislature of Coahuila and Texas passed a law, hereinafter copied in full, claiming the power to dispose of 400 sitios of the vacant public lands in that State, and on April 25, 1835, a national law was passed declaring this law null and void which law was as follows( Reynolds, 193):

*Nullifies a decree of the legislature of Coahuila and Texas.*

Article 1. The decree of the legislature of Coahuila and Texas of March 14 of the present year is, in its articles 1 and 2, contrary to the law of August 18, 1824, consequently the alienations made by virtue of said decree are null and of no value.

2. In the exercise of the powers the General Government reserved to itself in article 7 of said law of August 18, 1824, the border and littoral States are prohibited from alienating their public lands for colonization thereon until the rules they shall observe in doing so are established.

3. If any of them desire to alienate any part of their public lands, they shall not have power to do so without the approval of the General Govern-



ment, which, in every case, shall be preferred if it sees fit to take them, and shall give the States the proper indemnity.

4. The General Government can, under articles 3 and 4 of the law of April 6, 1830, by virtue of its preference right, purchase of the State of Coahuila and Texas the 400 *sitios* it says it is under the necessity of selling.

The decree cited in article 1 of the preceding law is the following:

*Supreme government of the free State of Coahuila and Texas:*

The governor *ad interim* of the State of Coahuila and Texas, exercising the supreme executive power, to all the inhabitants thereof, know ye:

The constitutional congress of the free, independent, and sovereign State of Coahuila and Texas has seen fit to decree —

Article 1. The government can dispose of as much as 400 *sitios* of land of the public lands of the State to meet the public emergency in which it is now situated.

2. It shall prepare regulations for the colonization of said lands under the bases and conditions it may deem proper, without regard to the provisions of the law of March 26 of last year.

3. The government shall provide the necessary means for the collection of whatever is due the State, whatever be its nature and origin.

It will be noticed that the decree of the national government, nullifying the decree of the legislature of Coahuila and Texas, in article second, says:

"In the exercise of the powers the General Gov-

ernment reserved to itself in article 7 of said law of August 18, 1824, the border and littoral States are prohibited from alienating their public lands for colonization thereon until the rules they shall observe in doing so are established."

So that we have a repeal of the third article of the Colonization Law of August 18, 1824, as to the border and littoral States; Texas and Sonora falling within this prohibition. It will be seen that the law of Texas which was nullified undertook to confer authority upon the officials of the State to dispose of 400 sitios of the public lands for the purpose of revenue. This shows clearly that whatever authority might have been given to the States under the third article of the law of August 18, 1824, as to Texas and Sonora, being one a border and littoral and the other a littoral State, was repealed, and no authority, unless thereafter conferred upon them, existed for the disposition of the public lands, except by the nation itself, and whatever rights Sonora may have had by virtue of the third article of the Colonization Law, to pass her laws of 1825 and 1834, yet that right was repealed and nullified by the same authority that conferred it.

This proceeding was followed by the law of October 3, 1835 (Reynolds 195), abolishing the States, dissolving the legislatures, and creating Departments, articles 1, 2, 3, and 5 of which are as follows:

Article 1. The governors who at present hold

their offices in the States shall so continue, even when they have completed the terms previously established in their constitutions, but subject in their continuance and in the exercise of their functions to the supreme Government of the nation.

2. The legislatures shall discontinue at once the exercise of their legislative functions; but before dissolving and after calling together those that have adjourned, they shall appoint a departmental board, composed for the present of five individuals selected from their own body or out of it, to act as the council of the governor; in case this office is vacant, they shall propose to the supreme Government such persons as have the qualifications that have been required heretofore, and until the government makes an appointment they shall perform the functions of government through the first one of the laymen named.

3. In the States where the legislatures can not assemble within eight days, the common council of the capital shall act in its stead, solely for the purpose of electing the five members of the departmental council.

5. All the subordinate employees of the States also shall continue for the present, but the places now vacant or that shall become vacant shall not be filled, and they as well as the offices, revenues, and branches of the service they manage are subject to and at the disposal of the supreme Government of the nation, through the proper governor.

On the same day and as part of the same law the President made regulations, articles 10, 12, and 13 of which are as follows:

10. In everything relating to the department of the treasury the governors and the respective officers shall proceed in accordance with the laws, regulations and orders of each state, in so far as may be compatible with the new organization of said revenues for the future.

\* \* \* \* \*

12. Said governors, in matters relating to the revenues, shall communicate directly with the supreme Government through the secretary of the treasury, to whom they shall forward all documents and statements and consult when they consider necessary, being careful to cite the laws, orders and proceedings (*expedientes*) there may be on the matter.

13. Until the attributes of the Government and departmental boards in what relates to the treasury are declared by law, said governors shall make no sales of land (*fincas*) or property (*bienes*), nor contracts nor extraordinary expenses for said department, without the previous approval of the supreme Government.

From the date of the passage of this law the government ceased to be federal in form and became centralized in its character. The States lost their autonomy and became purely and simply municipal subdivisions of the national government, standing in the same relation to that government that the territories formerly did. Texas, however, as I have before mentioned in this brief, did not submit to this, but rebelled, and was maintaining her right by force of arms, resulting in independence, to pass the law which the national govern-

ment undertook to nullify, as before mentioned. Sonora also rebelled, but did not succeed, and on October 23, 1835, a basis for the new constitution was adopted (Reynolds, 201), under which the government was carried on until the adoption of the new constitution on December 29, 1836 (Reynolds, 203-208). This new constitution prescribed, with great particularity, the duties of each officer of the Departments, and nowhere is an officer of a Department authorized to make a sale or grant of the public lands. It defines the powers and duties of the governors of the Departments and departmental councils, and section 3 of article 15 is as follows:

Restrictions on the governors and departmental councils (*juntas*): They cannot exercise other powers than those which this law designates for them, the violation of this part of the article and the two preceding ones being a matter involving the strictest responsibility.

Therefor, this constitution must, by virtue of its own terms and restrictions upon the power of the officers of the Department, have taken away from them whatever rights had been conferred upon them by virtue of the regulations of November 21, 1828, thereby resulting in a repeal of the whole colonization system as it had theretofore existed. All laws promulgated subsequent to this constitution were laws of a general nature and applied to each of the Departments, irrespective of

whether they had formerly been States or territories. That the national lands included the vacant lands within the former States or territories is evident by subsequent legislation upon this subject by which the lands of the nation were pledged for the indebtedness of the nation. The legislation under this constitution is of this character, which is an absolute construction by the proper authorities of the country that the vacant public lands in all of the Departments of the country were the property of the nation, and had not been receded by the States, and being the property of the nation, could be sold, granted and mortgaged for the necessities of the country.

On January 17, 1837, a law was passed (Reynolds, 210), establishing a national bank and the creation of a redemption fund, articles 2 and 3 of which are as follows:

2. The Government, without loss of time, shall establish and provide regulations for a national bank, with the principal object of redeeming copper coin, the management of which shall be entrusted to persons elected by the different classes of society, in the manner said regulations shall provide, and who shall not be dependent on the Government other than to render thereto an annual report of their administration.

3. There are adjudicated to the bank for a redemption fund:

First. All the real property of the nation that exists in all the territory of the Republic.

On April 4, 1837, a law was passed (Reynolds 222) providing that the government shall proceed to make effective the colonization of the lands of the Republic, which contains the following provisions:

The Government, in concurrence with the council, shall proceed to make effective the colonization of the lands that are or should be the property of the Republic, by sales, leases, or mortgages, and shall apply the proceeds (which in the first case shall not be less than \$1.25 per acre) to the payment of the national debt, already contracted or which shall hereafter be contracted, always reserving enough to meet its obligations to the soldiers who took part in the war of independence, and for the remuneration and gifts Congress may grant to Indian tribes and nations, and those who assisted in the restoration of Texas, and it shall not be compromised by the laws heretofore enacted on colonization, which enactments are all repealed in so far as they conflict with this law, but the prohibition of article 11, of the law of April 6, 1830, shall remain in force.

It will be noted that it repeals all laws in conflict with it, but especially keeps in operation the prohibition of article 11 of the law of April 6, 1830, which relates to colonizing foreigners of adjacent countries in the States and territories that adjoin them. This would indicate a repeal of the provisions of the other laws in relation to the disposition of the public lands. In fact, it was a direct repeal thereof.

On April 12, 1837, a law was passed (Reynolds



223), creating a national consolidated fund, the seventh article of which is as follows:

Art. 7. For greater security in the payment of the capital and interest of the consolidated fund, the Government of Mexico especially mortgages, in the name of the nation, 100,000,000 acres of public lands in the departments of the Californias, Chihuahua, New Mexico, Sonora and Texas, as a special guaranty of said fund, until the total extinction of the credits, but if any sale of these mortgaged lands should be made, it shall be at least, at the rate of said 4 acres to the pound sterling, and the proceeds thereof shall be paid by the purchaser to the agents of the Government in London, from whom only he can receive the corresponding warrant, and the latter shall employ the proceeds of the same to pay the bonds of the new consolidated fund, which shall also be received in payment of said lands, at the current price of said bonds in the market.

It will be noticed by this article that the national government specially mortgages 100,000,000 acres of lands, situated in the Departments of California, Chihuahua, New Mexico Sonora and Texas. I submit that this provision would be absolutely inconsistent with the ownership of the lands in the former States by the Departments, or any control over the vacant public lands by any of the officials of the Departments by virtue of any law of an extinct State.

On April 17, 1837, a decree was promulgated, (Reynolds, 224), creating the office of Superior Chief

of the Treasury, and providing for the manuer of making purchases, sales and contracts on behalf of the nation, articles 1, 2, 4, 37, 73, 76, and 92 of which are are as follows:

Article 1. Until the general congress establishes the revenues that are to form the national exchequer of Mexico, the revenues, taxes and property of which the supreme Government is in possession, and the revenues, taxes and property which the departments established or acquired under the federal system, and which existed at the time of the publication of the decree of October 3, 1835, shall continue.

2. The revenues, taxes and property which by the law of the 17th of last January were assigned to the national bank, are excepted from the provisions of the last article until it fulfills its object.

4. Superior chiefs of the treasury shall be located in each department with the powers designated in this decree. All the employees of the treasury in their respective districts, in the instances and manner which shall be designated, shall be subordinate to them.

\* \* \* \* \*

37. It is the duty of the departmental treasurers:

To muster the troops that may be in the capital; to issue to them their vouchers; to make abstracts of the muster and estimates, and to discharge, in the department of war, the powers given to the commissaries-general and auditors of the treasury by the regulations of July 20, 1831, which for the

present remain in force in all that is not opposed to this decree and subsequent laws.

\* \* \* \* \*

73. All the purchases and sales that are offered on account of the treasury and exceed \$500 shall be made necessarily by the board of sales, which, in the capital of each department, shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the attorney general of the treasury, and the auditor of the treasury, who shall act as secretary. Its minutes shall be spread on a book which shall be kept for the purpose, and shall be signed by all the members of the board, and a copy thereof shall be transmitted to the superior chief of the treasury, for such purposes as may be necessary and to enable him to make a report to the supreme Government.

\* \* \* \* \*

76. The minutes of the board shall be spread on the proper book, which shall be signed by all the members thereof, and an authenticated copy transmitted to the superior chief of the treasury to enable him to make a report to the supreme Government, when the case requires it.

\* \* \* \* \*

92. The powers that by various laws are given to the commissaries-general and subcommissaries shall be exercised in future by the superior chiefs of the treasury and their subordinates, in so far as they do not conflict with this decree, for in that respect all existing laws stand repealed.

It will be noticed that the law of July 20, 1831, before referred to and quoted, was to remain in full force

when not opposed to this and subsequent laws. It will be remembered that article 131 of the law of July 20, 1831, provides that the sales and purchases intended to be made shall be published for at least eight days beforehand and by placards, which shall be put up in the most public and frequented places, and they shall be inserted in the newspapers of the greatest circulation, if there be any in the place, the commissaries being careful that such notices contain the necessary information about the matter and its most essential circumstances. This provision is not inconsistent with the law of April 17, 1837; therefore, when we take the form of the title in this case, it is clear that no attempt was made to conform to the laws of the nation in existence at the time, and it also appears that the provisions of the latter law were in no instance complied with in making this sale and grant. The officers provided in this law to make these sales were not the same as those purporting to have made the sale in this case, and the reason for this is plain and simple: they were officers of a State in rebellion against the national government, trying to carry out the laws of a State that had become extinct.

December 7, 1837, a law was passed by the supreme Government prescribing the duties and powers of governors (Reynolds 230), section 2 of article 1 of which is as follows:

It shall be the duty of these officials (governors), in the exercise of the powers of supervision given them by the sixth constitutional law in its article 7, part 12 (which article provides that the governors shall watch over the officers of the exchequer of the department in the manner the law shall provide).

\* \* \* \* \*

Second. To preside over the boards of sale and of the treasury, with power to defer the resolutions of these latter until, in the first or second session thereafter the matter under consideration is more thoroughly examined into.

On September 15, 1837, there was a convention between English bondholders of Mexican bonds and the Mexican Government (Reynolds, 227), section 7 of which reads as follows:

7. For greater security in the payment of the principal and interest of the consolidated fund, the Mexican Government, in the name of the nation, specifically mortgages 100,000,000 acres of public lands in the Departments of the Californias, Chihuahua, New Mexico, *Sonora*, and Texas, as a special guarantee of said fund until a total extinction of the credits; but if any sale of the mortgaged lands should be made it shall be made at least at the rate of said *4 acres to the pound sterling*, and the proceeds shall be paid by the purchaser to the agents of the Government in London, from whom only he can receive the corresponding inscriptions, and they shall use the proceeds of the sale to redeem the bonds of the new consolidated fund, which may also be received in payment of

said lands at the price said bonds have in the market.

The Mexican Government, besides the general mortgage contained in this article, expressly reserves by a public decree 25,000,000 acres of the lands of the Government in the departments of closest communication with the Atlantic and which appear most suitable for colonization from the outside. Said lands shall be specially and exclusively set aside for the deferred bonds in case it is desired to exchange them for lands, and if the Government sell them the proceeds therefrom shall be devoted to the redemption of said bonds.

On June 1, 1839, a law was passed approving the above named convention (Reynolds, 232) and article 3 of this law is as follows:

3. With respect to the colonies that may be established by virtue of the convention, the Government shall see that the existing laws on colonization, or those that may be enacted hereafter, are observed in so far as they are not contrary to the convention itself.

On September 28, 1841, "assembled in the general quarters at Tacubaya, at the call of his excellency the general in chief of the army, well deserving of his country, Antonio Lopez de Santa Anna, the generals of divisions, of brigades," and other important officers of the army, and formulated a plan for a new government (Reynolds, 234), declaring that the supreme powers established by the constitution of 1836 should cease in their functions, and making other important

provisions as a basis for a new form of government, sections 2 and 7 of which are as follows:

Second. No other means being known for supplying the will of the departments than to appoint a board composed of two members from each one of them, born therein or citizens thereof and now in Mexico, his excellency the general in chief shall select them, that they may, with full liberty, designate the person in whom the executive power is to be provisionally deposited. \* \* \*

Seventh. The powers of the provisional executive are all those necessary for the organization of all the departments of public administration.

On May 6, 1850, the legislature of the State of Sonora, which had been rehabilitated by the re-establishment of the constitution in 1846, passed a law, which is hereinafter copied in full, providing for the colonization of the vacant lands within its boundaries, and on May 14, 1851, the constitutional congress of the Mexican nation passed the following law (Reynolds, 296) annulling the decree:

The decree of the legislature of the State of Sonora of May 6, 1850, is unconstitutional, which says:

No. 134. The constitutional congress of the State of Sonora decrees the following:

Article 1. There are colonizable in the State all the desert and vacant lands on its frontiers which belong to it and are not the property of an individual, corporation, or town.

2. To all foreigners who desire to establish



themselves on these lands and who are not disqualified to do so under the general laws, security and protection to their persons and interests are offered.

3. The State grants to every family settling on said lands one *caballeria* of irrigable agricultural land, which is an area 1,400 *varas* long by 552 *varas* wide, and a *sitio* of 5,000 *varas*, squared, of grazing land, and in addition the necessary land for building houses in town to live in.

4. The settlers on the lands under this law must establish themselves thereon and cultivate the same to enjoy the products thereof, and shall not alienate them until after six years, under penalty of losing them and of their passing to another settler who applies for them.

5. For the term of ten years from the establishment of a colony the settlers thereof are exempt from every direct or indirect tax now imposed or that the State may impose.

6. The effects, utensils, lumber, and whatever may be brought in for use or consumption of said colony are also exempt from all duties for said term.

7. All products of the colony are likewise exempt from all taxation in the State.

8. The gold and silver taken therefrom from the time of its establishment are exempt from the assay tax of 3 per cent.

9. The Government is empowered to regulate, in its turn, the government and interior administration in the establishment of colonies that may be made on said lands, to contract for enterprises

with this object in view, and to determine the most suitable lands under the purposes and franchises of this law. If for this purpose further privileges are solicited, they may be granted at the discretion of the Government, subject to the approval of Congress.

10. Foreigners established in the colonies shall enjoy all the civil and political rights the laws give them, as also the power they thereby have to acquire every kind of real property.

11. Mexicans and foreigners shall enjoy the same privileges in a colony in Sonora, but in equality of circumstances the Mexican promotor of a colony shall alone be preferred to the foreigner.

12. The colony shall be understood as established as soon as there is gathered together therein at least the number of one hundred families in the sense of a town.

13. To the promotor who contracts for the establishment of a colony, under the articles of this law, there may be granted as a property 10 *sitios* of grazing land and its *caballerias* of irrigable agricultural land, or 10 of *temporal* land.

14. The colonists, in case of necessity, are obligated to contribute with their persons and interests to the defense of the State and of their new country.

Because it is opposed to article 11 of the act of reforms, May 18, 1847, which says:

It is the exclusive right of the general Congress to establish bases for colonization and to enact laws under which the powers of the union are to perform their constitutional functions. (Reynolds, 284).

And to article 2 of the general law promulgated April 25, 1825, which says:

Art 2. In the exercise of the powers reserved to the general Congress in article 7 of said law of August 18, 1824, the frontier and littoral States are prohibited from alienating their vacant lands for colonization until the regulations to be observed in carrying it out are established.

It will thus be seen that at no time subsequent to 1835 were the frontier and littoral States or territories permitted to alienate the public lands lying within their boundaries. In 1846 after the provisional re-establishment of the constitution of 1824, the first epoch of what is known as the central system of government, ceased, and the nation continued under that constitution, although in a revolutionary state, until February 4, 1853, when the leaders of the army, in rebellion against that government, promulgated the basis of a new government, which virtually provided for the election of a Dictator.

On March 17, 1853, Santa Anna was declared elected President under this plan, and on the 22d of April of the same year, he issued his decree establishing "bases for the government of the Republic until the promulgation of the constitution throughout Mexico," and assumed supreme power. Following this, he proceeded to issue the decrees, before quoted and discussed, of November 25, 1853, and July 7, 1854, declaring the

status of the vacant public lands in what was formerly the States and Departments.

The laws upon which disposition of the public lands might be executed, are as follows:

National Colonization Law (Iturbide), January 4, 1823, (Reynolds, 100).

Law of August 18, 1824, (Reynolds, 121).

Law of January 26, 1831, (Reynolds, 151).

Law of July 20, 1831, (Reynolds, 157).

Law of April 25, 1835, (Reynolds, 193). This law annuls the colonization law of Coahuila and Texas, and prohibits the sale of the public lands in the border and littoral States for colonization, until the rules should be established by the national government.

Law of April 4, 1837, (Reynolds, 222), which we contend repeals all colonization laws.

Law of April 17, 1837, (Reynolds, 224), providing a general scheme for the revenues of the government, and particularly providing for the manner of making sales on account of the treasury. This law specifically provides that the law of July 20, 1831, shall remain in force except where its provisions are in conflict with the latter, although all these laws contain elaborate provisions for sales, purchases and contracts on account of the treasury. These repeals were in force or had been in force prior to the sale in this case, which is alleged to have been consummated on April 12, 1838.

It will be noted that the law of July 20, 1831, and that of April 17, 1837, must be considered together, as they are upon identically the same subject matter. The chief officer having charge of the matters under the law of 1831 was called the commissary general. This office was abolished by the decree of April 17, 1837, and his duties and powers devolved upon the superior chief of the treasury, and this office was abolished by a decree of December 16, 1841, and these powers and duties were conferred upon the Departmental Treasurers, so that until at least 1841, the Departmental Treasurers were not the officers to make sales on behalf of the national government. They were, first, commissary general, next, superior chief of the treasury, who it is not contended made this sale.

The officers who extended the title in this case undertook to do so both under the laws of the State and of the nation, and evidently failed in both, as they complied with neither. The petition was directed to the Treasurer-General of the State. The proceedings up to the commencement of the sale were in conformity with the State laws of May 20, 1825, and July 11, 1834, but it will be noted that the Treasurer-General of the State, was the officer who was to make the sale and extend the title for the State and no board of sales is provided for. Under the national law, however, of July 20, 1831, article 126 provides (Reynolds, 158):

126. All purchases, sales and contracts made on account of the Treasury, whatever be their purpose, shall be made by the Commissaries-General sitting as Boards of Sale; *but before convoking them, it shall be absolutely necessary to receive first the order therefor, either from the Supreme Government, communicated directly or through the Treasury-General, or rather from the Directory of Revenues, when it relates to matters subject thereto.*

Article 127 provides for holding the sessions of the Board in the Commissariats, and that the regular members of the Board shall be the Commissary or Sub-Commissary, who shall preside, the senior officer of the Treasury or the one who acts in his stead, and the Attorney-General, where there is one.

Article 128 provides, in addition to the regular members before mentioned, for special members, depending upon the character and purpose of the sale or purchase that was to be made.

Article 131 provides that these sales and purchases shall be advertised for at least eight days before hand by placards to be put up in the most frequented and public places, and also be inserted in newspapers of the greatest circulation, if there be any in the place.

Article 132 provides that a strict record shall be kept of all the proceedings which shall be signed by the members of the Board. After the proceedings of the Board have been concluded, it is necessary for the

Commissaries and Sub-Commissaries to forward the proceedings to the Supreme Government, *"without whose approval, the purchase, sale or contract shall not be carried into effect."*

Under the national law of July 20, 1831, it is impossible for Jose Justo Milla, the auditor of the extinct State of Sonora, or the auditor of a department of the national government, acting as Treasurer-General of the extinct State, or Treasurer-General of a Department under the national government, to have had any authority to convoke this Board of Sales or to make a sale on account of the national government, because there was no Treasurer-General of the Departments and the office was unknown to the laws of the nation at the time.

Proceeding next to the law of April 17, 1837, which should be construed in connection with the foregoing law, we find article 4 of this law (Reynolds 224) provides that Superior Chiefs of the Treasury shall be located in each Department with the powers designated in this decree. Article 73 provides that all purchases and sales that are offered on account of the Treasury and exceed five hundred dollars, shall be made necessarily by the Board of Sales, which, in the Capital of each Department, shall be composed of the Superior Chief of the Treasury, the Departmental Treasurer, the First Alcalde, the Attorney-General of the Treasury,



and the Auditor of the Treasury, who shall act as Secretary. Its minutes shall be spread on a book which shall be kept for the purpose, and shall be signed by all the members of the Board, and a copy thereof transmitted to the Superior Chief of the Treasury, for such purposes as may be necessary and to enable him to make a report to the Supreme Government.

Referring to the title papers in this case, the first Almoneda says (R. 17):

"In the city of Arispe, on the eighth day of April, 1838, the senores comprising the junta de almonedas (board of sale) having met, these gentlemen being the senior treasurer of the State by the ministry of law; the comptroller, Don Jose Justo Milla; the judge of the first instance of this district, Don Francisco Mendoza, and the administrator of revenues of this city, Don Jose Carillo, for the purpose of celebrating the first almoneda, referred to in this *expediente*, whereupon at the sound of the bell, many individuals assembled at the office of the treasurer-general, when the auctioneer, Florencio Baldizan, said in a loud and clear voice: "There will be sold on account of the public treasury of the State, five square leagues of vacant lands, a little more or less," etc.

Under the law just referred to, I do not see how this Board of Sales can be said to be a national body, composed of national officials, authorized to dispose of the public lands or property of any other character by sales or purchases. Although the law of July 20, 1831, was

not repealed except in those parts which were in conflict with this law, yet this particular board was created for the purpose of making sales exceeding five hundred dollars, and the law is silent as to those who made sales for less than five hundred dollars, and the only rational and logical conclusion that I can arrive at is, that the law of July 20, 1831, remained in force for the purpose of sales under five hundred dollars, and I am borne out in this contention by the 92d article of the law, which is as follows:

92. The powers that by various laws are given to the Commissaries General and Sub-Commissaries, shall be exercised in future by the Superior Chiefs of the Treasury, and their subordinates, in so far as they do not conflict with this decree, for in that respect all existing laws stand repealed.

So that the Superior Chief of the Treasury, in making sales of lands under five hundred dollars, would move under the provisions of the law of July 20, 1831; whereas, if he were making sales of land over five hundred dollars, he would move under the provisions of the law of April 17, 1837. But taking both these laws, and applying them to the recitals in the title papers in this case, and applying them to the official designations given to themselves by the various officials who participated in this grant, it will be seen that Jose Justo Milla did not occupy either generally or temporarily the office of Commissary General or Superior Chief of

the Treasury, but he attempted to act as Treasurer General of the extinct State of Sonora, and had no authority to bind the national government, and so far as the State was concerned, it had become extinct by virtue of the constitution of 1836. It is apparent then under the principle announced in the case of the United States vs. Hartnell, 22 Howard 288, that:

*"The public domain (of Mexico) was the property of the Mexican nation, and those who are enabled to displace that title, separate portions of it from the public lands, and vest such portions in individual proprietors by perfected titles could only do so in the exercise of sovereign power, because the public title was a sovereign right, and agents who assumed to exercise this authority must show that they represented the nation."*

The grant cannot be sustained as a national or State grant.

It is contended by counsel that "a grant or concession made by that officer who is by law authorized to make it, carries with it *prima facie* evidence that it is within his power. No excess of them, or departure from them, is to be presumed. He violates his duty by such excess, and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions must show it." This principle meets with no objection on my part, but the attempted application of it to this case, I do challenge; first, because the officer making the grant is not one of extended and

general powers nor is he authorized by the law to make it, and the fact that he attempts to make it raises no presumption that he did have the power. If the mere fact of acting or pretending to act as an official carries with it any verity, shifting the burden of proof, then there has been no official of either Spain or Mexico in the ceded territory who has been too humble to assume to himself the authority to execute broad and general powers to dispose of the public lands of his King or of his government. This whole question has been settled by this Court in the case of *U. S. vs. Cambuston*, 20 Howard, 59-63. In speaking of the presumptions of authority upon the habitual granting of lands by Mexican governors of the territory of California, and whether the customary manner and mode of making grants does not furnish presumptive evidence both of the existence of the power and the compliance with the forms of law in the execution, the court says:

“We agree that the affirmative of these questions has been frequently determined by this court, in cases involving Spanish titles in the territories of Louisiana and Florida. \* \* \* But no such presumptions are necessary or admissible in respect to Mexican titles granted since the act of 18th of August, 1824, and the regulations of 21st November, 1828.

And in the case of *U. S. vs. Hartnell*, heretofore cited, the court emphasizes this proposition by decid-

ing that where one claims under a Mexican grant, he must show that the granting officer represented the nation.

But Congress, in its wisdom, has seen proper to prescribe the principles upon which the courts are to adjudicate upon these titles by providing in section thirteen, that the courts should not confirm any claim until it should appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land; also that no concession, grant or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent, should be admitted or confirmed unless it should appear that every such condition and requirement was performed within the time and manner stated in any such concession, grant or authority to acquire land. And these instructions apply to perfect as well as imperfect grants.

I have undertaken to show at some length, by quoting and citing from the laws themselves, that Jose Justo Milla and his board did not and could not represent the State of Sonora, because it was extinct, and this grant should fail for want of authority in those attempting to extend it.

I therefore respectfully submit the case upon the following propositions:

1. That the grant, on its face, bears internal evidences of having been antedated.

2. That no equity vested in the original grantee by reason of failure to take possession of the property prior to the cession to the United States.

3. That the grant was not duly recorded in the archives of Mexico, as provided by the sixth article of the treaty of Mesilla.

4. That whatever may have been the fact as to the *locus* of the title to the property, Santa Anna, by his dictatorial decree of November 25, 1853, pending the negotiations for the treaty, declared the status of the same, which was a construction of the laws of the country by the proper officials at the time of the purchase and must enter into the construction of the treaty and claims made under its provisions.

5. That the States, independent of the declaration of Santa Anna, never held the title to the public lands, and never had any authority to sell or otherwise dispose of the public lands of the nation, except by virtue of the third article of the Colonization Law of August 18, 1824, subject to the restrictions imposed by that article and the other articles of the law.

6. That the grant, having been initiated in January, 1838, and concluded on April 12, of the same year, if it sought to bind the nation thereby, must have been executed under its laws in force at the time, and I con-

tend that those laws in force at the time were the laws of July 20, 1831, as modified by the law of April 17, 1837, which I have undertaken to demonstrate.

7. That even admitting that the officers who attempted to execute this grant had the power to do so under the laws of the nation, the record discloses that they were in secession against the national government, in violation of its constitution and laws, and *ipso facto* had no right, without subsequent ratification and approval, to despoil the nation, against which they were rebelling, of its property.

Lastly, they had no right to execute the laws of Sonora, because that State lost its autonomy, its laws had become extinct, and these officers had lost their status as officers of the State, except as they sought by force of arms and secession, to re-establish themselves against the national government.

We therefore respectfully submit that this grant should not be confirmed upon each and every one of the grounds before stated.

Respectfully submitted,

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*Special Assistant to the Attorney-General.*





No 45. 8

Reply Brief of Atty. Gen.  
v. Raymond, for Opp.

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In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT, }  
v. } No. 45.  
EARL B. COR.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

REPLY BRIEF ON BEHALF OF UNITED STATES.

# **In the Supreme Court of the United States.**

OCTOBER TERM, 1896.

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THE UNITED STATES, APPELLANT, }  
v. } No. 45.  
EARL B. COE.

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**APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.**

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**BRIEF ON BEHALF OF UNITED STATES.**

REPLY.

Since writing the brief on behalf of the Government in this case, I have been served with an additional brief by the appellees to which I deem it proper to make some reply. As to the facts disclosed by the record and the controversies relating thereto between myself and counsel upon the other side, I deem it immaterial to reply, as the record will speak for itself. I do not deem it prudent or proper to waste space or time in explaining the performance of my duty when I seek to analyze the grant and every element of it, with a view of determining

whether or not it was lawfully and regularly made by competent authority, as required by the act creating the Court of Private Land Claims, as a condition precedent to a confirmation.

I have challenged the *bona fides* of this grant and continue to do so. Attached to the original *expediente* in the receipt for the taxes, the alleged granting officer, Jose Justo Milla, did not correctly write his own name. It is not contended that the name as signed to that instrument by the granting officer is a bad signature, but that it is absolutely wrong in this, that the name was written "Jose Jose Milla" in a splendid hand, and, judging from its execution, the man who wrote it was not under such influences or conditions as might occasion his writing most any name. It has not been shown, and I do not suppose it can be, that the granting officer in this case ever signed his name in this way before. An examination of the archives at Hermosillo shows that he had two ways of signing his name, "Jose Justo Milla," and "Milla." The remarkable similarity between this signature attached to the *expediente* and the other signatures of Milla known to be genuine was the cause of a good deal of conflict of testimony as to its genuineness. From an examination made by Mr. Will M. Tipton, expert in the office of the United States attorney for the Court of Private Land Claims, he was unwilling to say that this signature had not been written by Milla, but Mr. Hopkins, who was used by the Government in the litigation in California, pronounced it a forgery.

A large amount of testimony was introduced tending strongly to prove that the signature was genuine, and

also the genuineness of a large number of other signatures that were attached to the document. But this does not meet the challenge that it was antedated. It is a historical fact that in California many grants which were presented for confirmation were manufactured subsequent to 1846, to which the signatures were all genuine. The condition in which we found the signature of Jose Justo Milla required and justified a careful analysis of the title, both as to the matter of execution and as to the matter of record, and also its custody and the acts of ownership sought to be exercised by those claiming under it from time to time. In my statement in the original brief I called attention to the fact that part of the proceedings of survey was not signed by the measurers. Replying thereto counsel for appellee excuses this upon the ground that they could not write their names, and refers to the concluding part of the certificate. This is the only certificate of all that I have had occasion to examine wherein an individual who should have signed a paper did not do so if he could write, or if he could not write, where his name did not appear as having been written by someone for him and that fact stated. An examination of these certificates will show that there were others who could not write their names, but their signatures were placed to the instruments for them by someone else.

#### STATE GRANTS.

In the last brief filed by counsel for the appellee, we have the contention squarely made that the States of the Mexican Republic did not acquire the title to the public

lands from the National Government, but were from their creation the owners thereof, and I am firmly convinced they must sustain this contention or the claim should be rejected. I shall not go over the ground covered in my original brief, in the historical statement, as to the status of the title to the vacant lands in Mexico. Counsel quotes several pages of historical matter from Mr. John H. Knaebel, a lawyer of ability and learning. A reading of his historical statement, however, demonstrates the fact that its principal value consists in his denunciation of the political integrity of General Iturbide. But at no place in his statement does Mr. Knaebel undertake to show where the title to the vacant public lands was at any time or under any circumstances.

It is historically correct, and the fact appreciated by all who have had occasion to investigate the question, that the title to the vacant public lands in New Spain originally belonged to the King and were disposed of under his orders, promulgated through the council of the Indies. Upon independence a nation was established, resulting in the Empire of Mexico, with General Iturbide as its head and Emperor. That nation was composed of all the provinces that had existed under Spain. The title to the public lands must have vested in that Empire or nation, and I propound the question: At what time, by what constitution, or by what law did it pass from the nation to any State, department, or territory? It is true General Iturbide did not become Emperor through any constitutional means, nor by virtue of any legal enactment. He became Emperor by force and power, and by the same force and power he maintained

himself and received the submission of his subjects as well as recognition from other Governments. And I may say that in the various transitions of Mexico from one form of government to another, none of the changes were accomplished by constitutional or lawful means, but by force of arms and revolution. But such changes, when once recognized and submitted to, were quite as effective as if they had been accomplished by constitutional and lawful means.

It is contended by counsel for appellee that in the constitutive act the sixth article thereof says, in speaking of the integral parts of the new government, that they *are* free, sovereign, and independent States, etc., and that by virtue of such wording of the declaration the conclusion is to be drawn that they had always been free and independent and entitled to the public lands, as were the thirteen colonies of this country. In the constitutive act and in the constitution it appears affirmatively that Mexico was declared to be a then existing nation. The fifth article of the constitutive act says: "The *nation* adopts for the form of its government a popular representative federal republic."

At that time it had overthrown Iturbide; a provisional government was in existence seeking to reach a more liberal form of government than had theretofore existed, but appreciating fully the fact that it had always been a recognized unity. Hence, in liberalizing the government, as suggested by Justice Hemphill in the case of the *Republic v. Thorne* (3 Tex., 499), the nation divided itself. The whole proposition may be stated in a few words. The States as created under the constitutive act



of January 31, 1824, and afterwards ratified by the constitution, had no rights and no power except those delegated to them by the National Government, and the National Government retained supreme power except in so far as it had surrendered by its own constitution any of its attributes to the States. In the formation of our Government the nation was created by the Colonies, and the powers and rights of each delegated and surrendered to the National Government, so that Justice Hemphill's statement was accurate.

I do not deem it prudent to enter into a detailed criticism of the brief filed by counsel for the appellee or the sources of his information, but submit a translation from Mr. Orozco's work recently published upon this question, believing that his means of information and evident ability entitle his statements to great professional consideration, and with what information I have been able to gather after a number of years of labor, that for the purposes of this litigation we shall never be able to arrive at any more accurate historical and logical result than is contained in his article on State grants, which is as follows:

#### PART 1.

[From *Legislation and Jurisprudence on Public Lands*, by Licentiate Wistano Luis Orozco, Mexico, 1895, Vol. I, p. 300.]

114. It has been seen in Title IV and in the present one how serious a matter is the issue of titles by the States, departments, and territories, which has had and will have for a long time yet an enormous importance.

In reality the adjudications of public lands made by the States, departments, and territories in favor of their inhabitants have been a great many. And what is even

more lamentable, they have also been made with greater frequency than would be believed by the ayuntamientos (common councils) of the towns, which have received the benefit of the price obtained from their adjudications, made without the slightest shadow of legality.

Thus it is that there are many properties unstable, unsettled at least, exposed to being the object of litigation, in which the federation may recover or attempt to recover legitimate rights.

115. This being so, those titles issued by incompetent authorities well deserve a little study and labor in order that we may see whether, in every case, a title of this character not revised by the General Government is void, and whether, at least, prescription will not come to throw a perpetual mantle over the defects that affect that title, thus transforming it into a safe and firm ægis of the right of property it is intended to protect by it.

The States have had power to give property titles in accordance with the law of August 18, 1824, for the express purpose of colonizing the lands ceded.

These titles are perfectly valid.

The States or departments could give titles of property with the express consent of the General Government, although the lands ceded may not have been intended for colonization.

These titles are equally valid, firm, and legitimate.

The States have issued property titles either under their own special laws or without any law having been previously enacted in the matter, without intending the lands granted for the important purpose of colonization, and without the previous consent of the General Government.

These titles are void and of no value as long as the revalidation thereof by the General Government is not obtained.

In this last case are the titles issued by the governments of the Territories and of the Departments in the

epochs when the system of the central Republic existed in the country; but the titles issued by these governments with the express authorization of the General Government are valid, firm, and legitimate.

Titles issued by the common councils are absolutely void. Neither action nor exception can be based upon them, and they can only give a right to the reduction of prices granted in the law of March 26, 1894.

116. \* \* \* It remains for us to investigate whether void titles not revised by the General Government can serve as a *just title* and *just cause* to create the right of prescription with power to acquire.

*We believe those titles are not sufficient to create the just cause required as an element essential to acquire an immovable by prescription.*

117. Article 3 of the law of December 3, 1855, considers fraudulent and illegal the alienations made by the States, departments, or territories, without the express consent or express authorization of the General Government, and subjects the holders of lands so alienated to the penalties the laws provide for punishing those who acquire property by fraud and against the law. And the same article expressly declares that the titles in which said alienations are set out are void and of no value. Therefore, the holders of these titles and the possessors of the lands ceded by them lack *good faith*, *just cause*, and *just title*, elements essential to acquire an immovable by prescription.

The title is lacking, because a void title can not be alleged nor be made to serve to prove the *just cause* of possession. *Quod nullum est nullum producit effectum*. For, as Pothier says, "In order that a possessor may acquire, by prescription, the thing he possesses, it is indispensable that the title from which the possession proceeds be a legitimate title." If his title is void, a *void title*

can not be considered a title, and the possession that proceeds from the same is a possession without title, which can not produce prescription.

The *just cause* is lacking, because this is nothing else than a proper title to transfer dominion, and a void title does not transfer it.

Finally, *good faith* is lacking, because this is based on an error of fact, which may be excusable in us, as we can never take advantage of error as against law. *Nunquam in usucapionibus juris error possessori prodest. Juris ignorantiam in usucapione negatur prodesse: facti vero ignorantiam prodesse constat.*

118. And although the law of July 22, 1863, grants reductions up to 50 per cent in the price of public lands to the possessor who has a title transferring dominion, *although said title is issued by one who had no right to issue it*, the concession extends only to the reduction of prices, but the Republic does not waive its right of dominion over those public lands, held under titles issued by one who had no right to issue them.

Finally, article 27 of said law requires that "all the requirements the laws prescribe for prescription" concur, in order that thereby property in an immovable may be acquired. And legal requirements are all those we have noted.

Law of April 6, 1830: After the colonization law of August 18, 1824, there is no other law on the subject till April 6, 1830, when the legislative chambers enacted the law of that date. (Reynolds, 148.) The principle that dominion over the public lands in their demarcations belongs to the States appears to be enunciated in articles 3 and 4 of this law. This principle is contrary to the text and spirit of article 11 of the "Acts of constitutional reforms" (Reynolds, 281), which was an integral part of the constitution of 1824, and only shows, in the words of Mr. Orozco, "how nations can err in their infancy."

Law of April 25, 1835: This is a decree of the National Government annulling a law of the State of Coahuila and Texas of March 14, 1835. (Reynolds, 193.)

Article 2 of this decree enunciates the same principle as articles 3 and 4 of the decree of April 6, 1830, just cited.

#### PART 2.

[Orozco, Vol. I, pp. 182 et seq., after giving the text of the law of August 18, 1824.]

#### RIGHTS OR POWERS OF THE STATES.

11. We have transcribed this decree in full, both because it is the first we find in the *collections* of laws that embrace under a general point of view the important matter of the colonization of our immense territory and because of the provisions of grave transcendancy which it contains relative to the intervention of the States in the matters of which this law is the object.

12. In reality, from its spirit and context, it appears that this law supposes the States admitted, by the constitutive act, as lawful owners of the public lands situated within the limits of their jurisdiction. Article 3, ordering the States to make laws or regulations for the colonization of their respective demarcations; article 10, directing the States to attend to soldiers who may be entitled to the allotment of lands that this allotment be made to them in reward for their virtues, as we suppose, attending to the spirit of that article, are precepts which apparently place beyond doubt the fact that the States of the ancient federation are considered as owners of the public lands in their territory.

13. We believe that several States have acted upon that article in granting property titles to public lands from those situated within their jurisdiction.

We do not believe there is any other law in existence of more importance than this one, upon which the States

may have been able to base their competency to have cognizance in matters relating to public lands, for although Eseriche's book (Dictionary of Legislation and Jurisprudence), edition of 1884, in the "Ordinances on land and water of the Republic of Mexico," which he inserts in one of its appendices, says that by the decree of August 4, 1824, there were given to the States the proceeds from the sales and compositions of lands in their respective demarcations, and that there remained for the General Government those from the territories of the federation, "we have carefully examined" the decree of August 4 which Eseriche cites, and we find that that assertion is entirely false, for, far from that decree making such a declaration, it expressly says (article first) that the national lands, of whatever denomination they may be considered, are a part of the federal revenues, and there is not found in all that law a single expression from which it could be deduced that the public lands are considered or declared to be the property of the States.

[Translator's note. In a footnote Mr. Orozco cites the following part of article 1 of the law of August 4, 1824:

"ART. 1. The following belong to the general revenues of the federation:

\* \* \* \* \*

"9. National property, in which is included that of the Inquisition and temporal property of the clergy, and any other rural or urban property that belongs or shall hereafter belong to the public exchequer."]

14. We believe, then, that in the decree of August 18, 1824, which we are considering, is principally where some rational foundation may be found for supposing the States have powers to legislate upon matters of public lands, and to adjudicate them to individuals as property, since, at least, it would be difficult to give any other interpretation to articles 3 and 10, which we have already cited, and to articles 11 and 16 of said decree.

15. Article 11 says that if the Supreme Government should deem it opportune to dispose of any portions of land to any of the employees of the federation, military as well as civil, *it may do so from the public lands in the territories.*

Article 16 directs that the Government proceed to the colonization of the *territories of the Republic* under the rules this decree establishes.

### III.

#### OBSERVATIONS.

16. It appears, then, that the powers of the federation to dispose of the public lands are restricted to the territories of the same, and that the constituent congress wished to leave to the States the dominion of the public lands situated within the limits of their demarcation.

From this have arisen very serious disputes, obscure confusions, as to the legitimacy of the rights acquired by individuals.

17. From the terms in which are conceived the constitutive act and the political constitution of 1824, as well as other decrees of that memorable assembly, it appears to follow that the constituents of 1824, in their inexperience in public affairs and of the great political interest of nations, were inclined, as a general rule, to divide the sovereignty and respectability of the Republic into many and wretched fragments.

18. If we follow this spirit which dominated those legislators, well might we say that the *eminent domain* over the national territory was ceded by this decree to the States into which the nation was divided by the constitutive act and by the constitution of 1824.

19. Nevertheless, as the *summum imperium*, the *eminens dominium* over the territory belongs to the very essence and nature of sovereignty, and as the national sovereignty



resides not in the States but in the federation, the organ of that sovereignty recognized by foreign powers, it can not be supposed that the nation would surrender any part of what constitutes the essence of its sovereignty, except by means of an explicit and express *constitutional* law.

20. Now, then, neither in the constitutive act nor in the political constitution of 1824 is there found the slightest indication that the constituents had the intention of despoiling the nation of the sovereignty of the territory for the purpose of granting it, after being torn into strips, to weak States, which could never duly represent the majesty of the Republic before the other powers of the world.

21. That the decree of August 18 was enacted by the constituent congress is not all; when it passed other laws than the constitution, it acted as an ordinary legislative assembly, and the case may very well have occurred of an unconstitutional law enacted by said congress, which had the high mission of giving a fundamental law to the Republic.

22. Then, at least, we can not consider legitimate any legislative act the purpose of which was to despoil the nation of its sovereignty over its own territory.

#### IV.

##### LEGITIMATE SIGNIFICATION OF THE RIGHTS OF THE STATES.

23. Thus it is that the only conclusion which, upon final analysis, can be reached from the provisions of the decree of August 18, 1824, is that the States could make laws upon colonization and grant property titles to public lands in the name of the Government of the Union, and that in all this they acted as simple agents of the federation.

24. This doctrine is confirmed by the diverse decrees enacted at later dates, at times by the congresses, at others by the executives of the nation, which decrees we will consider in their place, and from which the invariable fact is observed that congresses and executives consider it within their exclusive jurisdiction to legislate on the matter of public lands. (See laws of July 7, 1854; November 25, 1853; December 3, 1855, and circular of October 4, 1856, herewith, in part 3.)

25. These doubts as to the competency of the States to legislate on said matter disappear at the time of the publication of the regulations of December 4, 1846, which fixed general rules for carrying out the survey and colonization of the public lands of the Republic, which regulations do not intrust to the States the power or the duty to survey or adjudicate as property the public lands within their jurisdiction.

26. Finally, article 11 of the "Act of reforms," promulgated May 21, 1847, declares that it is of the exclusive power of the general Congress to give bases for colonization of the lands of the Republic, and under this constitutional precept the States are deprived of the right to make laws on colonization, although there is no express repeal of the law of August 18, 1824, so long as said power is not again granted to them—power which has not again been granted to them up to date.

## V.

### TITLES ISSUED BY THE STATES.

27. But it is a fact that the States and even the departments, during the epoch of the central government, issued property titles for public lands.

All these titles were subject to revision not only under the decree of July 7, 1854, and November 25, 1853, which were declared void by the constituent congress on

the 16th of October, 1856, but also under the law of December 3, 1855, still in force up to date in so far as not in conflict with later laws and under the circular of October 4, 1856.

28. All this may give rise to important questions as to the validity of the titles issued by the States or the departments and as to whether or not those titles can be sufficient to establish the right of prescription in the cases where they have not been revised by the Federal power.

But we will consider these questions in title 6 of this book, when we speak of the laws we have just cited.

[Orozco, Vol. II, pp. 784 et seq.]

## I.

### ON DIVERSE MODERN ORIGINAL TITLES.

354. We call modern titles *those documents transferring the dominion of land issued by the rulers of Mexico since national independence.*

These titles, as we have already stated, have been issued by the Presidents of the Republic, and probably also by the Emperors of Mexico, or in their name, the channel for the said issue of titles being the department of exterior and interior affairs, the department of the interior, and, finally, the department of public works.

But many titles of dominion were also issued by the governors of the States of Coahuila and Texas, Chihuahua, Sonora, and Sinaloa, which promulgated on matters of colonization and occupation of public lands the special laws which we consider in title 4 of the present book. Other States, without making laws on the occupation of public lands, have also granted many titles of dominion over them, believing themselves fully authorized to do so by the general law of August 18, 1824. The political

chief of Lower California and of the extinguished Territory of Tehuantepec also issued titles for the ownership of public lands located in the region under their command. Sometimes, also, the common councils of the towns issued property titles for lands situated in their demarcation, which titles are evidently void.

355. With respect to titles issued by the governors of the States or departments and by the political chiefs of the Territories, the supreme powers of the Republic have issued several important laws, now declaring the nullity of those titles, now establishing certain formalities by which the revalidation and perfectionment of said titles may be obtained, which laws we have collected and studied in Titles IV and VI of the present book, to which places we refer our readers, if they desire more information on the matter.

Some of the titles issued by the governors of the States were given with the express purpose of colonizing the lands disposed of, or were given by these same governors, or by those of the departments in the epochs of the Central Republic, or by the political chiefs of the Territories with the express authorization of the supreme government of the nation. These titles are declared valid, sufficient, and perfect by the law of December 3, 1855. All titles that were issued by said governors or political chiefs without the conditions mentioned need to be revalidated and confirmed by the supreme government of the nation, under penalty of being considered fraudulent, null, and of no value, as provided in article 3 of said law of December 3, 1855.

356. We have, then, starting from national independence:

1. Titles of dominion over public lands issued by the common councils of the towns.
2. Titles issued by the political chiefs of the Territories.

3. Titles issued by the governors of the departments or of the States of the Republic.

4. Titles issued by the Presidents or by the Emperors of Mexico.

Titles issued by the common councils of towns or by the governors of the States are in the form of a writ of sale drawn up under the old routine of notaries public, for the formalities and formulas of an adjudication of royal lands were things unknown to our *provincial* people.

Titles issued by the Presidents of the Republic are in the ceremonious form of an *imperial favor*.

## II.

### ON THE VALIDITY OF MODERN TITLES.

357. In regard to the validity of modern titles, as we have stated in titles 4 and 6 of the present book, we have:

1. The titles issued by the common councils of the towns are void and of no value.

2. The titles issued by the governors of the departments or by the political chiefs of the Territories, without the express consent or authorization of the supreme government of the nation, are void and of no value, so long as they are not revalidated by said supreme government.

3. Titles issued by the governors of the States without lawful authority therefor or without dedicating them to the exclusive purpose of colonization are void and of no value, so long as they are not revalidated by the supreme government of the nation.

4. Titles issued by the executives of the frontier States or Territories, in favor of naturalized foreigners or natives of adjoining countries, for lands situated within the extreme twenty leagues of our territory, are void and of no value for all time.

5. The titles issued by the governors of the States in accordance with the precepts of the law of August 18,

1824, and for the exclusive purpose of colonizing the lands granted, are perfect, valid, and reliable.

6. The titles issued by the governors of the States and by the political chiefs of the Territories with the express authorization or consent of the supreme government of the nation are valid and perfect.

7. The titles issued by said authorities without the consent or authorization of the supreme national government, but afterwards revised and authenticated and confirmed by said supreme government, are valid, sufficient, and perfect.

8. The titles issued by the supreme rulers of Mexico are valid, perfect, and sufficient for all time.

358. The validity of which we here speak is that of the title considered by itself, and not with regard to its object, because all questions that may arise from the conflict of rights with third parties will at times make an original title ineffective, but they will not affect its own nature. The only thing that will happen in these cases *is that there will be no matter upon which to execute the title*; that is to say, there will be lacking in that title the possibility of its exercise, but not the legal validity.

#### SANTA ANNA'S DECREES.

I do not desire to add much to what has been said in the original brief with reference to the decrees of Santa Anna of November 25, 1853, and July 7, 1854, except that succeeding governments of Mexico up to the present day, although these decrees were declared to have been improperly promulgated, have recognized the correctness of the statement of the status of the titles and original rights of the States and departments. Counsel for appellee insists that the law of November 25, 1853, is an attempted forfeiture of titles lawfully vested in citizens of Mexico.

It is not pretended by the decree, nor is it claimed by anyone who has ever examined it, that it purports to forfeit lawfully vested rights; but it is a construction, by the proper authority of Mexico, of its own laws and the rights of the various political departments in relation to those of the National Government, resulting in the legal proposition that persons holding title under the States and departments during the various systems, which titles had not received the assent or approval of the National Government, never had from the inception any lawful right, and therefore there could necessarily be no forfeiture. But it seems to me that even had the superior authorities of Mexico under its own laws forfeited the title, it illy becomes us, having recognized that same Government, having treated with it and purchased the property from it, to undertake to protect its own citizens when it did not then and does not now recognize that they had any rights to be protected. The difficulty into which counsel has been led is the fact that the action was that of Santa Anna, dictator, and he bears heavily upon his title and he relieves against it by denouncing him as a political usurper and dictator exercising superior authority over Mexico without any right. Be this as it may, as a historical proposition the United States is in no condition to make such a contention.

It will also be understood that I do not admit that the effect of Santa Anna's decrees was to work a forfeiture of any vested rights, but they were simply declaratory of what was the the existing law of the Republic as construed by proper authority.



And the application of the provisions of the act creating the Court of Private Land Claims, also the treaty and the laws of the Mexican Republic as construed at the time of the treaty by proper authority, regard parties holding under State grants as being detainers without title.

It is true that they were permitted by subsequent decrees made by Santa Anna and those who succeeded him in providing the means by which these detainers could obtain lawful titles, and giving them a preference right to do so, but such laws and decrees were matters of grace and not matters of right.

If the claimants in this case assumed that the proceedings they have initiated in the Court of Private Land Claims would result, if the contentions of the Government were sustained, in a forfeiture of the title which they possessed, they should not have availed themselves of the provisions of the act, but stood upon the election given them by Congress in the eighth section thereof.

But when Congress permitted the United States to be sued, it had the right to prescribe the terms and conditions upon which said suit could be maintained, and in availing themselves of the provisions thereof, they accepted the burdens imposed.

It seems to me that in construing the treaty and rights guaranteed thereunder, which were only such as were obligatory upon the Mexican Government at the time, we must read into the treaty the law under which the grant was made and the construction given thereto by a proper authority at the time the treaty was signed.

Without discussing the matter further, and in order to show the court the construction given to these various decrees then and now by the officials of the Republic of Mexico, I respectfully refer to the following translation from Mr. Orozco's work :

### PART 3.

Mr. Orozco, at page 277, Vol. I, of his work, speaking of the Santa Ana decrees, says :

95. Both the law of November 25, 1853 [Reynolds, 324], and that of July 7, 1854 [Reynolds, 326], were declared null by the decree of the constituent congress promulgated October 16, 1856 [Reynolds, 331]. But, as ordinarily happened in the midst of our lamentable political dissensions, the faction triumphant at the time put in force the very statutes it nullified, accomplishing nothing more than a change of phrases and suppressing the salutary and appropriate rules which the law of July 7, 1854, established for the revision of titles, thus resulting therefrom all the inconveniences and annoyances of revision without the advantages of a positive, legal, and recognized procedure for accomplishing said revision.

96. This revision was then provided for by the law of December 3, 1855, and its construction determined by the circular of 1856 [hereinafter], which we have cited. Therefore it is not without utility to know in full the decrees nullified, the legal predecessors of those which are in force, and the precepts of which are executed in practice in making revisions, inasmuch as there are no others on the subject.

Orozco, page 288 :

104. The following law has not been nullified up to date [1895] : Law of December 3, 1855 (Reynolds, 329).

105. Article 2 of this law declares valid all alienations made by the States, departments, or Territories, provided

those alienations have been made *with the express authorization or consent of the supreme government*; a declaration which makes no innovation, for the same thing had been declared in articles 5, 6, and 7, of the law of July 7, 1854, and in article 2 of the law of November 25, 1853.

106. Article 3 declares void all titles issued by the States, departments, or Territories without the express consent and approval of the General Government; the same thing that had been declared by the provisions of the laws of 1853 and 1854, which we have just cited.

We find, then, proclaimed and sanctioned in this decree, once more, the principle that every title issued by a State, department, or Territory is void, if it was not made in the name of the General Government, and so long as the revalidation of that Government is not obtained to purify it of every legal defect.

107. Both in this decree (article 5) and in that of July 7, 1854 (article 7), are declared null the alienations made in favor of private persons (individuals or companies) for the express purpose of colonizing the lands granted if the grantees have not complied with the conditions of colonizing them.

It is seen at once that those lands are denounceable by any person whatever qualified to acquire public lands; although it is the obligation of the denouncer to prove, before competent tribunals, the failure to comply with that condition [that of colonizing]; for it is not just to suppose that the grantee has violated a solemn compact.

[Circular of October 4, 1856.]

108. The genuine construction of the decree we have inserted in the foregoing paragraph is authentically determined by the following circular, the conception of which it is unnecessary to explain:

Government of the District of Mexico: The most excellent minister of public works, under date of the 4th inst., says to the Government what I copy.

**MOST EXCELLENT SIR:** The law of December 3 last, which repealed those of November 25, 1853, and July 7, 1854, declared in its article 3 that the alienations of public lands made by the authorities of the departments under the central system, without the authorization or consent of the supreme government, and by those of the States, in contravention of the law enacted by the general congress on the 18th of August, 1824, were void and of no value, and that, in consequence, the holders of that class of lands were liable to the penalties provided for those who may acquire property (*bienes*) in an illegal and fraudulent manner, unless they should obtain the approval of said supreme government.

In virtue of this provision, which is so conclusive, this department has continued to revise the titles that have been forwarded to it, and to declare firm and valid those that were not included in some of the cases above mentioned, and void those that were found therein; stating to the parties in interest, with respect to these last ones, that the supreme government would ratify them upon payment of the indemnification which they themselves should propose. Many have been the declarations of this character that have been made and communicated by the agents of this department to the individuals they included; but very few have taken advantage of the provision in the law cited, and most have not even stated the cause that compelled them not to duly comply therewith; and inasmuch as a toleration of this failure to obey the supreme dispositions results in a loss of prestige on the part of the authority that makes them, and besides damages of consideration result to the parties in interest themselves, since, if they do not obtain the revalidation of their titles, they are liable to the penalties provided for those who acquire property in an illegal and fraudulent manner. His Excellency, the substitute President of the Republic, desiring to remedy these evils, has been pleased

to direct that the agents of this department state to the persons who hold lands, whose acquisition has been declared void by the law cited or by this department, by virtue of the said law, that if they do not apply for the revalidation of their titles within a reasonable time, which said agents shall set for them, by that very fact said lands shall be considered as national lands and shall be adjudicated to whoever applies for them.

All of which, by supreme order, I have the honor to communicate to your excellency, that it may, in the manner you may consider convenient, come to the knowledge of the inhabitants of that district, that they may, when informed of the obligation they are under, hasten to apply for the revalidation of their titles, in case they are found to be included in the provisions of the law cited of December 3, or that some resolution of this department has been communicated to them on those already presented.

And by order of his excellency the governor I inclose it to you that you may be pleased to publish this circular in the Official Daily newspaper, and I protest to you my esteem and consideration.

God and liberty.

J. M. DEL CASTILLO VELASCO.

MEXICO, *October 28, 1856.*

I made the statement in my original brief that Sonora and Sinaloa as the State of the Occident was the only one that had ever claimed any right to the vacant public lands under the law of August 4, 1824, and I have no reason to retract that statement. The fact is that all of the States of the Mexican Union originally undertook to exercise the right of disposition of the public lands within their boundaries, under the third article of the colonization law of August 18, 1824, which right they realized

the National Government could at any time revoke. As time passed, becoming stronger, they reached out and were disposed to be independent because of an infusion of population from the United States which was not in sympathy with the National Government, and particularly is this true of Texas, and undertook to dispose of the public lands irrespective of the colonization law. When called to task therefor by the National Government, they realized that under the colonization law of August 18, 1824, they could not claim the unrestricted right of disposition; but not presuming that they had any right under the law of August 4, they threw themselves upon the broad proposition that they had always been owners of the public lands and had acquired no rights from the National Government under the constitution or laws, and then, and not until then, commenced the controversy resulting in the revolution of 1835, the independence of Texas, and the subjugation of Sonora.

I notice in the brief of counsel for appellee a number of Texas cases cited with a view of sustaining the contention that the title to the vacant public lands was originally in the States. This question was one of the causes of the revolution; Texas made the contention good by force of arms, and it is hardly to be expected that its judiciary would hold that the contentions of the political power which achieved its independence and recognition as a nation were not legally correct. But Sonora did not fare so fortunately; in the revolution she was unable to make this contention good, and as a penalty for her rebellion she lost her autonomy as a State

and at the point of the bayonet surrendered to the National Government every contention that she had theretofore made and became an ordinary department thereof. One of her contentions was that the States had always been the owners of the vacant public lands within their boundaries, and Santa Anna, who was actively on the stage at that time, when he promulgated his decree in 1853, declaring that the right of disposition of the public lands belonged to the National Government and always had belonged to it, understood perfectly well that he was declaring a principle which had been maintained by the National Government by force of arms.

It is contended also that in 1838, when this grant was made, the officials and the people of Sonora were acting and carrying on their government as a sovereign and independent State under the national constitution of 1824 and the laws passed thereunder, as well as the State constitution of 1825 and laws passed thereunder, in the face of and in violation of the national constitution of 1836 and the laws promulgated thereunder. There was no armed conflict then going on, but there was a violation by the officials and the people of that municipal subdivision of every obligation they were under to maintain the integrity of the country of which they were subjects. The nation until some time after was not strong enough to reach Sonora. It seems to me that the conditions existing in 1838, as shown by the record and admitted by counsel in his brief, bring the acts of the officials within the letter and spirit of the decision of



Mr. Chief Justice Chase in the case of *Texas v. White* (7 Wall., 700), wherein he says:

All admit that during this condition of civil war the rights of the State as a member and of her people as citizens of the Union were suspended. The government and citizens of a State refusing to recognize their constitutional obligations assume the character of enemies and incur the consequences of rebellion.

It seems to me that Jose Justo Milla and his confreres, who were carrying on a government under a system of laws in antagonism to the constitution of the nation, seeking to dispose of property over which they had no legal right as national officers, subjected their acts to the denouncement of absolute and unconditional nullity. I admit that if subsequent to that time it can be shown, and there should be no doubt about it, that the National Government had ever ratified or approved in some direct manner the making of a grant in this case, then it is entitled to confirmation. But so far, to my mind, this condition has not yet been satisfied.

It is contended also that Sonora, being a *de facto* State having possession of the property, had a right to dispose of it under the general proposition that a *de facto* government exercising governmental functions and in possession of property may lawfully dispose of the same. I do not deny the general proposition, but there is one element absent in the proposition stated by counsel in his brief as to *de facto* governments, and it is this: It is not shown that the officials of Sonora in 1838, with their antagonistic form of government in existence, were

ever recognized by the Mexican nation as a *de facto* government, with any rights as such under the constitution of 1824 and the laws promulgated thereunder. But on the contrary, as I stated in the original brief, instead of getting back to the constitution of 1824, Sonora was, by force and the power of the National Government, driven by Santa Anna into a more centralized form of government, under the plan of Tacubaya, in 1841.

It is further contended that the original grantee acquired whatever title the Mexican nation possessed, and counsel refers to the granting clause as evidence thereof. It appears therein that the granting officer recited that he conveyed the title of the State of Sonora, as well as that of the Mexican nation, and because of these recitals a presumption is to be indulged in that he possessed authority from the National Government to transfer whatever title it might have, and the case of *United States v. Peralta* (19 How.) is cited in support of the proposition. I am prepared to admit the general proposition that where an officer is authorized by law to perform a particular act or acts, and he does so, those acts are binding and valid, although he may misrecite the law conferring the power; but I am not prepared to admit, where an officer possesses no power under any law to do an act, and he does undertake to execute that act, and recites in a general way that he has authority to do so, that any presumption arises in its favor.

If the proposition as stated is correct, then we have no measures by which we can test the legality of the acts of the various officials of the Government. But this court, to

my mind, has settled the proposition in the case of *United States v. Cambuston* (20 How., 59), wherein it was held that under a government regulated by a constitution and laws creating officers and conferring authority and powers upon them, no presumptions as to original authority are to be indulged in. (*U. S. v. Garcia*, 22 How., 274.) The whole theory of this presumption grew out of the necessities of the litigation in the Florida and Louisiana cases because the property was the private property of the King of Spain, and his accredited agents might receive secret instructions of which the public was not aware.

Therefore, looking to the laws of the nation for the power and authority to dispose of the land, we find, as stated in the original brief on behalf of the Government, that Jose Justo Milla was not the officer authorized by law to make the grant, and that there was no such officer at that time as treasurer-general, and that the proceedings as disclosed by the *expediente* in no respect conformed to the provisions of the national law, and I may remark that they were not intended to conform to the national law, but were made by usurping State officers under a State law in violation of the constitution and laws of their country, and such action under the circumstances as disclosed by the *expediente*, calls for condemnation rather than the attempt to justify them by doubtful and strained application of general principles declared in cases having some substantial equities and some lawful inception.

I contend that there is no evidence in this case sufficient to warrant the court in holding that the Mexican nation subsequent to the date of the grant in 1838 ever

ratified or approved the same or the action of the officers thereof.

The evidence relied upon by counsel, to my mind, is insufficient to accomplish the purpose. The principal document relied upon is to be found on page 87 of the record, and I respectfully call particular attention to the same.

It is an *ex parte* affidavit alleged to have been made in the year 1881 before the treasurer-general of the State of Sonora by Matias Moran and Antonio Corrillo.

How this affidavit happened to be made we have no information, except the fact that it is now found among the files and the archives at Hermosillo. The peculiar wording of the same is enough to challenge its integrity, as well as the fact of its execution in 1881 at Hermosillo, where it remained undisclosed, so far as we are informed, until the suit was commenced in the Court of Private Land Claims in 1892.

The recitals, to commence with, are as follows:

I, Manuel Diaz, as treasurer-general of the State of Sonora, Mexican Republic, acting by notary public, appeared Matias Moran and Citizen Antonio Corrillo, of this precinct, who do say that, being personally present in the treasury office for the purpose of giving compliance to the foregoing disposition or order of the governor of the State, proceeded to examine, one by one, the signatures of which are contained in the expediente that forms the title to the lands situated between the Colorado and Gila rivers, that in the year 1838 was adjudicated to Don Fernando Rodriguez, in that of 1847 was approved by the supreme government of the nation.

\* \* \*

It will be noted that these recitals are merely preliminary recitals to the testimony as to various facts set forth therein.

It is sought to draw from the foregoing statement the conclusion that these witnesses had knowledge of the approval of the National Government, or there was something appearing on the face of the expediente showing that fact.

All the examinations that were made prior to 1881 disclosed the existence of no such fact as the approval of the National Government, and I challenge, not the fact of the existence of this affidavit, but the truth of the recitals therein, based upon the idea that we are not able to verify it by any archive evidence, either at Hermosillo or elsewhere, and it must have been made with a view of afterwards being discovered by those who were called upon to investigate the archives when the claim might be presented for adjudication to the tribunals of the United States, or it would have been filed with the surveyor-general of Arizona.

And I submit that in all of the evidence and all of the correspondence no such approval or recognition as will warrant a confirmation has been shown.

It seems to me, considering the conditions of Mexico from 1838 to 1853, little presumption is to be indulged in as to the recognition by the Republic of Mexico of the acts of rebellious State officers.

It was as much as the national officers could do, by assuming supreme authority, to keep the entire nation from being dismembered by such officers as those who sought

to extend this title, and whatever denunciations may be made of Santa Anna, he thoroughly understood his people, he thoroughly understood the manner in which they could be governed, and, commencing with the overthrow of Iturbide in 1823 to 1854, he was the one central figure in Mexico, sometimes peacefully and sometimes by force of arms, always maintaining its national integrity as against the extravagant and rebellious contentions of the various municipal subdivisions thereof.

No one figure in Mexico stands out so prominently, from 1822 to 1856, as that of Santa Anna, and his continued participation in the affairs of the Government during that entire time stamps him as a man of most remarkable ability and force of character, and a man who desired and intended that the unity of the country should not be destroyed by secession.

As to the law with reference to the record required under the sixth article of the Gadsden Purchase, I simply desire to submit that under the decisions in the California cases the question of record was treated as one of evidence. Under the Gadsden Purchase it should be treated as one of procedure. And I do not see how the distinction between the requirements is to be effected, unless we are more stringent in verifying documents by the records under this treaty than under the former.

And it was the evident intention of the high contracting parties to require all titles to be submitted to a more severe test than formerly.

Muniments of title delivered by a government to an individual as evidence of title are always based upon a

governmental record. If the record exists and the muniments can not be verified by it, then it must fail for want of integrity. If the records of that date have been lost or destroyed, that fact must be shown, and in addition it must be shown that the identical documents produced had been recorded in those archives, and some direct connection must be made.

I contend under the testimony of Mr. Rochin, that the present book, being the registry of titles issued from the year 1831 to 1849, is the evidence required by the treaty.

Mr. Rochin says, in testifying as to the book: "It is a book made for the purpose of being presented in evidence," and I therefore contend that it was the only proper and lawful evidence of the record of the grant. (R., 85.)

It is contended that the State of Sonora, in its constitution, declared that it was the owner of the vacant public lands, and the court has been furnished with the constitution of Sonora of 1825 and a translation thereof.

I call the court's attention to the first section of article 1. It is as follows:

FIRST SECTION.—*Of the State, its territory and religion.*

ARTICLE 1. The State of the West and its territory is composed of all its communities which embraced which heretofore was called the Intendencia and political government of Sonora and Sinaloa. A constitutional law will fix its limits.

ART. 2. In that which belongs exclusively to its internal government and administration, it is free,

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independent, and sovereign, and in regard to that which relates to the Mexican federation, it delegates its rights and faculties to the congress of the union.

It does not seem to me that either of these articles sustain the contention that the public lands were declared to be the property of the State.

I next call the court's attention to section 16, Article 393, found on page 24 of appellee's printed translation, which is as follows:

SECTION SIXTEENTH.—*Of the public landed property of the State.*

#### REVENUES.

ARTICLE 393. The rents that are not reserved to the federation by their decree of classification of the 4th of August of 1824, last past, are those which until now have formed the elements of which the landed property of the State is composed. In the future, Congress shall impose contributions that they may think proper to cover, as may be sufficient, the deficit that may result against the state of the general expenses of the Mexican federation that may be assessed for it to pay and the local expenses of the State.

An examination of the entire section which relates to landed property does not sustain the contention made by counsel for the appellee.

The laws of the State of Sonora of May 20, 1825, and July 11, 1834, nowhere mention the fact that they were passed for the purpose of disposing of the public lands under the revenue law of August 4, 1824.

And I am satisfied that all of the States relied for their right to dispose of public lands upon the third article of the colonization law of August 18, 1824.

One of the counsel in concluding his argument before this court, and referring to the case of *Texas v. White* (7 Wall., 700), undertakes to sustain the acts of the State officers upon the proposition that Sonora was a *de facto* State, and that rebellious officers acting under its laws and constitution were to have lawful recognition and effect given thereto, stating the fact that Mr. Chief Justice Chase in the opinion had recognized the principle that although a State might be in active rebellion against the National Government and its officers, acting in violation of its constitution and laws, yet in maintaining peace and good order, or, in other words, the mere police regulations, it would be recognized as having acted with lawful authority.

But he fails to draw the distinction between the exercise of police powers and the power to dispose of public property. That suit was instituted to nullify the acts of the officers of a State in rebellion in disposing of property which had theretofore belonged to the old State, and the court held in vigorous terms that the acts of the *de facto* officers of the State in rebellion in selling bonds that had belonged to the old State were invalid.

Therefore, applying the proposition to the acts of the officers of the State of Sonora in 1838, the attempt to dispose of public lands within its boundaries was invalid; and it makes no difference whether the lands belong to the *old State* or belong to the National Gov-

ernment. If they belong to the National Government, surely an attempt to despoil it of its property by those who were acting in violation of its constitution and laws can not be sustained.

In submitting this case, I contend that the doctrine announced by Mr. Chief Justice Chase in the case of *Texas v. White*, when applied to the testimony contained in the record, as to the situation of the State of Sonora and its government at the time the grant was made, leaves no foundation upon which to sustain this title, as a State grant, nor as the acts of officers lawfully and loyally executing powers conferred upon them by the nation, but by their contentions assumed the character of enemies and incurred the consequences of rebellion.

We therefore respectfully submit the entire case.

HOLMES CONRAD,

*Solicitor-General.*

MATTHEW G. REYNOLDS,

*Special Assistant to the Attorney-General.*





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IN THE

# Supreme Court of the United States

THE UNITED STATES OF AMERICA,

APPELLANT,

VS.  
EARL B. COE,

APPELLEE.

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## Motion to Dismiss Appeal, and Brief

E. M. SANFORD,  
A. M. STEVENSON,  
S. L. CARPENTER,

*For Appellee*

IN THE  
Supreme Court of the United States.

THE UNITED STATES OF AMERICA  
APPELLANT.  
*vs*  
EARL B. COE,  
APPELLEE.

Motion to Dismiss Appeal.

And now comes Earl B. Coe, the above named Appellee, by his attorneys, and respectfully suggests :

1. The Congress of the United States has no power to confer upon the Supreme Court jurisdiction to entertain an appeal from a decision of the Court of Private Land Claims, the latter tribunal not being vested with judicial power in virtue of any provision of the Constitution.

2 The act creating the Court of Private Land Claims, in prescribing the course of procedure upon appeal, imposes upon the Supreme Court of the United States the exercise of original jurisdiction, contrary to the provisions of the Constitution of the United States.

And thereupon, and because this Court is without jurisdiction to entertain the said supposed appeal, the Appellee moves the dismissal thereof at the cost of the Appellants.

## BRIEF IN SUPPORT OF MOTION.

Former decisions of this Court have clearly settled that there are but two classes of Courts that may be created by Congress, in virtue of the powers granted it by the Constitution of the United States. They are defined as constitutional courts, or those created by virtue of Sec. 1 of Art. 3 of the Constitution, and "legislative courts," or those created or authorized by Congress in virtue of the power granted by sub-division 2 of Sec. 3, Art. 4 of the Constitution, "to make all needful rules and regulations respecting the territory or other property belonging to the United States."

As the Act of March 3, 1891, 26 Statutes at Large, 854, establishing the Court of Private Land Claims, provides that the judges thereof shall hold their offices for a term expiring on the 31st day of December, 1895, it is clear that such tribunal is not a constitutional court.

Const. Art. 3, Sec. 1.

American Insurance Co. vs. 356 Bales of Cotton.  
1 Pet. 511-546.

Brenner vs. Porter, 9 How. 235-242 et seq.

McAllister vs. United States 141, U. S. 174.

That the Court of Private Land Claims does not fall within the class denominated "legislative courts" would seem to be equally clear inasmuch as Congress derives its power to create such courts or to confer judicial power upon courts created by other legislative bodies solely from that provision of the Constitution hereinbefore referred to, empowering Congress to make rules and regulations respecting the territory belonging to the United States.

Cases cited *supra*.

Clinton vs. Englebrecht, 13 Wall. 434-447.



The purpose of the act creating the Court of Private Land Claims is, as stated in its title, "To provide for the settlement of private land claims in certain States and Territories." No jurisdiction is conferred upon the court by the act to administer the judicial power of the United States in respect of any of their territory or property. The matters committed to it by Congress for adjudication are such as might well have been determined by Congress itself without recourse to judicial agency, in carrying out, in good faith, the provisions of the treaties made with Mexico, by virtue of which this government acquired sovereignty over the territory in which these lands are. Indeed, for many years Congress pursued the policy of hearing and determining these claims for itself. Mr. Justice Field, in his dissenting opinion in the case of the United States vs. The Judges, 3 Wall. 673, uses the following language: "These cases belong to that class of controversies which are properly subjects of administrative regulation and do not become converted into suits in equity because judicial agency is brought in to aid the administrative proceeding. They may be submitted to the entire disposition of a Board of Commissioners without the violation of any principle, just as the California land cases are submitted, in the first instance, to such board for investigation." So in this case: Because the proceedings to determine a controversy before the Court of Private Land Claims takes, by direction of Congress, the form of judicial procedure, it does not follow that the orders of that tribunal made in the progress of a hearing, or its final determination of the matter, is the exercise of the judicial power of the United States.

The language of this court in the case of the United States vs. Ferreiro, 13 How., 40, is applicable to the power conferred upon the Court of Private Land Claims. "It is

nothing more than the power ordinarily given by law to a commissioner appointed to adjust claims to land or money under a treaty. A power of this description may constitutionally be conferred on a secretary, as well as on a commissioner, but it is not judicial in either case in the sense in which judicial power is granted by the constitution to the courts of the United States."

As the Court of Private Land Claims is not a court in the sense of having been vested with the judicial power of the United States, it would seem to follow that Congress may not impose upon this Court the exercise of appellate jurisdiction over its decisions.

However much we may disagree with the reasoning and conclusions of Mr. Chief Justice Bartley in his dissenting opinion in *Piqua Bank vs. Knoup*, 6th Ohio St., 343-391, the following proposition is not to be denied:

"Appellate jurisdiction is not only a continuation of the exercise of the same judicial power which has been executed in the Court of original jurisdiction, but it necessarily implies that the original and appellate courts are capable of participating in the exercise of the same judicial power."

Speaking of the appellate power of this court, Mr. Chief Justice Taney, in the case of *Gordon vs. United States*, 117, U. S. 698, says:

"The appellate power and jurisdiction are subject to such exceptions and regulations as the Congress shall make, but the appeal is given only from such inferior courts as Congress may ordain and establish to carry into effect the judicial power specifically granted to the United States \* \* \* \* \* And Congress cannot extend the appellate power of this court beyond

the limits prescribed by the Constitution, and can neither confer nor impose on it the authority or duty of hearing and determining an appeal from a commissioner or auditor or any other tribunal exercising only special power under an act of Congress.”

U. S. vs. Ritchie, 17 How., 525.

Hayburn’s case, 2 Dall. 409.

U. S. vs. Ferreira, 13 How., 30-46.

*Re Sanborn* 148 U. S., 222.

Grisar vs. McDowell, 6 Wall., 363.

Interstate Commerce Com. vs. Brimson, Opinion of Sup. Ct., May 26, 1894.

In the case of Auditor of State vs. A. T. & S. F. R. Co., 6 Kan. 505, we find a quite accurate statement of our position. “The term, then, ‘appellate jurisdiction,’ as used in the constitution has some other meaning than that there should be merely an appeal from some decision or act of some officer of the state, and it is this meaning of the term that is to be sought for. In this search we are not left entirely to our own reason for guidance. The constitution of the United States contains a clause of similar import which has been the subject of comment and decision by the Supreme Court of the United States, and the substance of their decision is thus stated by Judge Story in his commentaries on the constitution, § 1761: ‘The essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals, an appellate jurisdiction, therefore, necessarily implies that the subject-matter has already been instituted and acted upon by some other *court* whose judgment or proceedings are to be revised. The appellate jurisdiction

may be exercised in a variety of forms, and, indeed, in any form which the legislature may choose to prescribe, but still the substance must exist before the form can be applied to it. To operate at all, then, under the constitution of the United States, it is not sufficient that there has been a decision by some officer or department of the United States, it must be by one clothed with judicial authority and acting in a judicial capacity.' This construction of the term represents as well the general views of men as the decisions of courts, and must have been in the minds of those who made it a part of our fundamental law, and must be held in this court as authoritative and binding. See the case of *Crane vs. Giles*, 3 Kan. 54; *ex parte Logan Branch Bank*, 1 Ohio St., 432.

"It is not sufficient, then, that there has been a decision. but there must have been a decision 'by a court' 'clothed with judicial authority and acting in a judicial capacity.'"

See also Elliott's App. Proc. §§ 15, 16, 17.

If this appeal is entertained the case is within cognizance of the judicial power of the United States for the first time here; that is original not appellate jurisdiction.

But should the Court be of the opinion that the Court of Private Land Claims is a tribunal administering the judicial power of the United States, and thus a part of its judicial system from which an appeal may be prosecuted to the Supreme Court, then we contend that in prescribing the mode of procedure in this Court upon such appeal Congress has transcended its powers and thus rendered nugatory the clause in the act granting the right of appeal.

By Section 9 of the act creating the court it is provided as follows: "On any such appeal the Supreme court shall re-try the cause, as well the issues of fact as of

law, and may cause testimony to be taken in addition to that given in the court below and may amend the record of the proceedings below as truth and justice may require; and on such retrial and rehearing every question shall be open and the decision of the Supreme court thereon shall be final and conclusive." It is clear from an examination of sub-divisions 1 and 2, of Section 2, Article 3 of the constitution of the United States, that as to such decree as may be rendered in controversies of this kind the jurisdiction of the Supreme Court of the United States is appellate only. Any act of Congress requiring the Supreme court to take original jurisdiction of such a matter would be unconstitutional and void.

But the section of the act creating the Court of Private Land Claims, above referred to, requires the Supreme court practically to try the cause the same as if it had originated in that court. It shall *re-try* the cause and on such retrial "*every question shall be open.*" The requirement that it shall re-try the cause upon the issues of fact and of law probably would not be obnoxious to its appellate jurisdiction if such retrial were limited to the record as it was made in the lower court; but when is added to this the requirement that the court shall cause additional testimony to be taken (for a proper showing having been made, this provision is undoubtedly mandatory) and that it shall re-hear and re-determine every question that may arise in the case the same as if it had not been litigated in the court below, a burden is imposed upon the Supreme Court of the United States not contemplated by the Constitution. The Congress of the United States cannot indirectly place a burden upon this Court that cannot be directly imposed under the Constitution. If it may say in a case of this nature that every question shall be open, and require of the Su-

preme Court that the cause shall be re-tried before it substantially as though it had never been tried, it can do so in any case at law or equity that may be litigated in the inferior federal courts. Under the provisions of this act the whole issue is open in this court; the parties are in nowise concluded by the proceedings in the lower court and may, if so advised, assume new positions here. The act simply affords a somewhat cumbersome method of getting a case into the Supreme Court where it is to be tried.

It will not do to say that this Court may entertain this appeal and dispose of it under the rules that would govern its procedure in equity causes that come by appeal from the inferior federal courts, because Congress has the right under the Constitution to prescribe the manner in which this Court shall exercise the appellate jurisdiction conferred upon it by the Constitution and having provided such rule the Court is bound to follow it. In *Wiscart vs. Dauchy*, 3 Dall. 321, Chief Justice Ellsworth, after stating the subjects of original jurisdiction of the Supreme court, says: "In all other cases, only an appellate jurisdiction is given to the court; and even the appellate jurisdiction is likewise qualified, inasmuch as it is given with such exceptions and under such regulations as the Congress shall make. Here then is the ground, and the only ground, on which we can sustain an appeal. If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided we cannot depart from it. The question, therefore, on the constitutional point of the appellate jurisdiction is simply whether Congress has established any rule for regulating its exercise?" But in this case Congress has provided a rule which is in contravention of the Constitution because it imposes on the court the bur-

den of re-trying the cause in its entirety. There is, therefore, no rule.

The Supreme Court is placed substantially in the same relation to the Court of Private Land Claims that the Federal District Court of California occupied in respect of the Board of Land Commissioners. In *U. S. vs. Ritchie*, 17 How., 525, it was "objected that the law prescribing an appeal to the District Court from the decision of the Board of Commissioners is unconstitutional; as this board as organized is not a court under the constitution and cannot, therefore, be invested with any of the judicial powers conferred upon the general government." In answer to this Mr. Justice Nelson, speaking for the court, uses the following language: "But the answer to the objection is that the suit in the district court is to be regarded as an original proceeding, the removal of the transcript, papers and evidence into it from the board of commissioners being but a mode of providing for the institution of the suit in that court. The transfer, it is true, is called an appeal; we must not, however, be misled by a name, but look to the substance and intent of the proceeding. The district court is not confined to a mere re-examination of the case as heard and decided by the board of commissioners, but hears the case *de novo* upon the papers and testimony which had been used before the board, they being made evidence in the district court; and also upon such further evidence as the party may see fit to produce."

So in *Grisar vs. McDowell*, 6 Wall., 363, the court by Mr. Justice Field, says: "The proceeding in the District Court, though called in the statute an appeal, was not in fact such. It was essentially an original suit in which new evidence was given and in which the entire case was open."



We submit that the language of the learned justices above quoted is applicable to the case at bar. A cause removed into this court from the Court of Private Land Claims is, by the provisions of the section authorizing such removal, "essentially an original suit" here.

"It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted and does not create that cause."

Marbury vs. Madison, 1 Cranch, 175.

But under the provisions of this act the power of the Supreme Court does not operate upon the proceedings of the Court of Private Land Claims. With its errors either in law or upon the facts, the Supreme Court has no concern; its judicial acts are not subjected to revision or correction; its decree receives no consideration—is not affirmed, reversed or modified; no mandate is directed to the inferior tribunal. The Supreme Court decides the whole matter finally and conclusively, regardless of the conclusions or findings of the Court of Private Land Claims, whose relation to the higher tribunal is simply that of a commission to take testimony.

We submit that this is the exercise of original not appellate jurisdiction.

E. M. SANFORD,  
A. M. STEVENSON,  
S. L. CARPENTER,

*For Appellee.*

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES.

THE UNITED STATES,

*Appellant,*

vs.

EARL B. COE,

*Appellee.*

*No. 45.*

*Appeal from the  
Court of Private  
Land Claims.*

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STATEMENT AND BRIEF FOR APPELLEE.

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STATEMENT.

An examination of the archives and records of the state of Sonora, in the republic of Mexico, and the title papers in this case, discloses the following uncontroverted facts, all of which fully appear in the record:

On the 4th day of January, 1838, Senor Don Fernando Rodriguez, a Mexican citizen, residing in the city of Hermosilla, in the state of Sonora, made written application to the treasurer general of the state for the sale to him of certain of the vacant lands of the state, being the land involved in this controversy.

On the 12th day of January, 1838, Jose Justo Milla, the auditor and acting treasurer general of Sonora, made an order appointing Mauricio Carrillo as a commissioner, to measure, survey and appraise the land applied for, authorizing him to appoint necessary assistants, give notice to all parties interested, and proceed to the land; the commissioner was required, upon the completion of his work, to transmit all of his proceedings, and make a report of all his doings to the treasurer general.

On the 12th day of January, 1838, the commissioner, Carrillo, accepted the appointment, and appointed Don Juan Rios Candelario, Jose Maria Sais, Don Julian Padillo and Don Alonzo Maria Freccarra as his assistants, and as the official measurers, counters and markers to accompany him.

These persons accepted their appointments, and took the necessary oaths to properly discharge their duties.

On February 3, 1838, on the land, the commissioner, Carrillo, and his assistants, in the presence of Rodriguez and the escort who had accompanied them, measured and surveyed the land and placed monuments thereon as required by law.

On March 8, 1838, after having returned to the capital city, from whence they started, the commissioner, Carrillo, appointed Don Alonzo Maria Fre-carra and Juan Rios Candelario as appraisers, to value and appraise the land. They performed this duty, valuing the same at the rate of \$80 per square league, or \$400 for the five square leagues surveyed.

On the same day, the proceedings for the valuation and measurement of the land having been concluded, the commissioner, Carrillo, ordered that thirty public offers of sale be made; that notice be given of such sale and bidders solicited; and he there-upon notified the judge of the first instance of the district of the proceedings already had, requesting that the judge give notice of the sale in all the pueblos of the district.

On March 9, 1838, the first public offer of sale was made by the official auctioneer, and thereafter the thirty offers of sale required by law were made, each of which are properly certified to by the commissioner, Carrillo.

On April 7, 1838, no purchaser having appeared, the commissioner, Carrillo, transmitted all of his proceedings to the treasurer general of the state for final action. On the same day the treasurer general referred all the proceedings to the promotor fiscal (attorney general) for his consideration and opinion.

On the 8th day of April, 1838, Jose Carrillo, the promotor fiscal (attorney general) certifies that he has carefully examined the proceedings; that the same are regular and in due form of law, and asks that the treasurer general order three additional public offers of sale, the same to be made by the junta de almoneda (board of sale), and that the land be sold to the highest bidder, and title issued to the purchaser.

On the same day, Milla, acting as treasurer general, orders that three public offers of sale be made, in accordance with the opinion of the attorney general, and in the manner prescribed by law. Thereafter these three public offers of sale were made by the junta de almoneda, consisting of the treasurer general, the comptroller or auditor, the judge of the first instance and the administrator of revenues. At the last offer of sale, the land was sold by this board to Senor Don Fernando Rodriguez for the sum of \$400, he being the highest bidder. Each of these offers of sale are duly certified to by the three mem-

bers of the board participating in the sale. (Jose Justo Milla, being the auditor or comptroller, and at that time acting as treasurer general, but three officers participated in the sale.)

At the conclusion of the sale, Rodriguez was notified to pay into the treasury the \$400 that he was to pay for the land, \$6 for fees of the last sale, and \$30 for the title that was to be issued, which he agreed to, and did do.

On the 12th day of April, 1838, the proceedings for the sale of the land having been completed, Jose Justo Milla, acting as treasurer general, issued in due form a title to Don Fernando Rodriguez, in fee simple, delivering to him the testimonio thereof, and certifying that the original expedienti of the title remained in the custody of the treasurer general, as the perpetual evidence of the sale. On the same day, Milla certifies that the purchase money, fees and charges, paid by Rodriguez for the land, is properly noted in the "libro manuel" of accounts for that year.

On the 13th day of April, 1838, Leonardo Escalante, governor of the state, replying to a note of Milla's, written on the day before, asking for an approval of the sale of the land to Rodriguez, certifies that he approves the same.

On the 27th day of March, 1838, Juan Jose Encinas, alcalde of the city of Hermosilla, certifies as to Rodriguez having sufficient means to stock and cultivate the land applied for, which certificate Milla directs annexed to the original proceedings.

The above includes all of the proceedings had up to the time of the delivery of the title to the purchaser.

After the purchase of the land by Rodriguez, the following proceedings relating thereto were had:

On December 21, 1840, Jose Maria Mendosa, treasurer general of the state, who was also the elected treasurer general at the time of the sale of the land in this case to Rodriguez, received an order from the supreme government of the nation relative to grants made by the state, and directing that the expedienti and other papers, evidencing title theretofore issued, and which had previously been presented to an agent of the national bank, should be returned to the proper archives of the state.

On the 30th day of May, 1841, Jose Maria Mendosa certifies that, by virtue of the foregoing order, the expedienti and other documents in relation to this land have been returned to the office of the treasurer general of the state.

On the 6th of June, 1847, Jose Maria Mendosa certified that he transmitted the expedienti and other

papers in this case to the supreme government, at Mexico, he having theretofore corresponded with the supreme government relating to the title.

On the 8th of June, 1847, Jose de Aguilar, governor of the state, certifies that the sale of the land to Rodriguez was in every respect legal; that the signatures of the different officers signing the different title papers are genuine, and that the sale or grant has been approved by the supreme government.

On the 15th of January, 1858, Jose Maria Mendosa, treasurer, and Florencio Trejo, second officer of the treasury, certified that they had examined the title papers of this grant, and that the same are in every respect genuine.

On the 10th day of September, 1858, Governor Ygnacio Pesquerro certified to the genuineness of the signatures of the officers signing the foregoing certificate.

The land involved in this controversy having, with other lands, been ceded to the United States, by virtue of the Gadsden treaty of 1853, this suit was instituted by the appellee, who had, by virtue of different mesne conveyances, become the owner of the same, for the confirmation of his title.

The appellee contends that his title was "complete and perfect" at the date of the cession of the land



to the United States, and asks for a confirmation under section 8 of the act of congress approved March 3, 1891. The petition for this purpose was presented to the Court of Private Land Claims on the 2d day of February, A. D. 1892. (Record, page 3.)

The answer of the United States raises the question of the genuineness of the title papers, and specifically denies many of the allegations of the petition. (Record, page 31.) The answer, however, does not raise many of the questions now presented by the brief of the United States, for the consideration of the court.

It was stipulated between counsel at the time of the decision of the court at Tucson, that the petition might be amended so as to cover the questions presented in argument, that the grant was made by national officers and recognized and approved by the national government. This stipulation, for some reason, does not appear in the record.

The opinion of the court, and the decree entered thereon, is in harmony with the amendment agreed to.

The case was tried before the Court of Private Land Claims, after the judges of that court had personally examined the archives of the state of Sonora, and testimony had been taken before them in that state, and a decree confirming the title ordered at

Tucson, Arizona territory, on the 24th day of February, 1893. By stipulation of parties the decree was entered and recorded at Santa Fe, New Mexico, as of February 24, 1893. From the judgment of the Court of Private Land Claims, the United States appeals to this court.

### BRIEF AND ARGUMENT.

At the commencement of this argument the writer states that he is conscious of his inability to present the questions involved in this case, in that manner which their importance deserves.

I am under many obligations to Messrs. Frederick Hall, of the California bar; Rochester Ford, of the Arizona bar; and John H. Knaebel, of the New Mexico bar, for valuable suggestions and assistance. These gentlemen are accomplished in the Spanish language and have given special attention and study to the laws, usages and customs of Mexico.

The obstacles surrounding an investigation of the laws of the republic of Mexico, and the legislation of the states forming the National Union, make the task most difficult. A country without reports of decisions; one that has undergone so many changes of government; whose written history is based so largely on assumed usages and customs, secret orders and intrigues; where the data is so imperfect, changes of

government so sudden, and the reasons therefor so little understood, that the most careful study of their "plans," "schemes," and "systems" of government leaves the mind confused, and makes the task of the practitioner, particularly if he be unacquainted with the language and customs of the people, an undertaking that can only be appreciated by those who have made the attempt.

We had assumed, until we read brief and argument of counsel for the government, that since the taking of the testimony, examining of the original records and archives in Mexico by the judges of the Court of Private Land Claims, and the decision of that court, that a discussion of the genuineness of the title papers, or any question concerning their execution and delivery, was unnecessary.

Says Mr. Justice Sluss, in delivering the opinion of the court below: "The evidence in this case is sufficient to show the title papers to be genuine." This statement of the court is concurred in by the two justices who dissented from the opinion. It now, however, appears that counsel understands it to be his duty to discuss several matters—to our mind most unimportant—relating to these proceedings. Having in mind the language of this court, that these titles do not depend "upon the nicest observance of

every legal formality," and the observations of Mr. Justice Grier, in *United States vs. Johnson*,

"Nor is it the duty of counsel representing the government to urge microscopic objections against an honest claimant, and urge the forfeiture of his property for some oversight of the commissioners in not requiring proof according to the strict rule of the common law."

*United States vs. Johnson*, 1 Wall., page 388.

And the following from Mr. Justice Field:

"To these observations, so just and pertinent, we will only add that the United States have never sought by their legislation to evade the obligation devolved upon them by the treaty of Guadalupe Hidalgo to protect the rights of property of the inhabitants of the ceded territory, or discharge it in a narrow and illiberal manner. They have directed their tribunals, in passing upon the rights of the inhabitants, to be governed by the stipulations of the treaty, the law of nations, the laws, usages and customs of the former government, the principles of equity, and the decisions of the Supreme Court, so far as they are applicable. They have not desired the tribunals to conduct that investigation as if the rights of the inhabitants to the property which they claim depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce

forfeitures, but to afford protection and security to all just rights which could have been claimed from the government they superseded."

United States vs. Auguisola, 1 Wall., page 358.

Not doubting that in the consideration of this case, the court will take a broad and liberal view of the obligations of the government of the United States, and apply those generous equities which are due from a great nation passing upon the rights of citizens' ceded territory, we will take as little of your honors' time as possible in replying to the suggestions of counsel regarding the grant and proceedings under consideration. His observations are critically technical, and in great part (if not altogether) in no wise go to the merits of this controversy, or the regularity or genuineness of these grant papers or proceedings.

Complaint is made because each of the assistants of the commissioner, Carrillo, did not sign certain of the certificates, and it is said that no reason is given for this failure. (Appellant's brief, pages 4-5.) The record (pages 10-11), however, discloses that each of these certificates is signed by all *who knew how to write*. We are then told (brief, page 6) that it does not appear whether advertisement was made in the district where the land was situated. The district referred to was called Guadaloupe del Alter. Jose

Carrillo, attorney general, to whom all of these proceedings were submitted for his examination, opinion and report thereon, reports to the treasurer general (record, page 16) that the commissioner did not summon the *colindantes* (adjoining proprietors), "*because there was none.*" And in the same report he says: "Neither does it appear that any interested party appeared from the District Guadalupe del Alter, to which judge of the first instance the commissioner, Don Mauricio Carrillo gave at the proper time the necessary official notice of the proceedings in relation to the sale of said vacant lands." Again it is said, that Rodriguez had an advantage over other bidders, on account of the condition upon which he informed the authorities he would purchase this land. (Brief, pages 7-9, 10.) How this is possible when many public offers of sale were made, the petition and all other proceedings being public records, subject to the inspection of any one, we fail to understand.

Pages 10 and 11 of brief speak of the *expediente testimonio* and the book *Toma de Razon*. We do not at all agree with counsel's conclusions here broadly stated without authority for their support. But, as we will discuss these matters under another head—Record of the Grant—we pass them now.

In discussing several certificates of different Mexican officials offered in evidence (brief, pages 14, 15, 16, 17), counsel for the first time in this case suggests that the following of these certificates may not be genuine, namely:

(L. S.)

Commissary General,  
State of Sonora.

JOSE MARIA MENDOZA,  
Commissary General,  
State of Sonora.

I certify that with this date I have sent on a separate sheet, and as a matter of communication, to his excellency, the minister of state and the land office of the republic, the official communication that is the following:

COMMISSARY GENERAL  
OF THE  
STATE OF SONORA.

Most Excellent Sir—Senor D. Fernando Rodriguez, a resident of the city of Hermosillo, has presented to me the grant title, that the treasury general of the (torn) state executed to his favor on the 12th day of April, 1838, for five sitios of public land for agriculture. The said Senor Rodriguez registered contiguous to the Gila and Colorado rivers, fronting their confluence and the place called the Paso de los Algodones, of

the said Rio Colorado, on the north of this state, and that (torn) surveyed, valued, proclaimed, and sold at auction, given and adjudicated in the terms appearing from the authorized testimonio which I have the honor to send to you with this, to the end that, as I attentively pray, you may bring to the knowledge of his excellency, the president of the republic, which is the object for which the said S. D. Fernando Rodriguez has presented to me the said title of the grant of the confluence of the Gila and Colorado and Paso de los Algodones.

I enjoy the honor of stating to your excellency my greatest veneration (torn) respectful regards. God and liberty.

JOSE MARIA MENDOZA.

Ures, Juna 6, 1847.

His Excellency, the Minister of State and of the Land Office of the Republic Mexico.

And that it may be a record where it corresponds, I extend the present at the request of the interested party, Sr. D. Fernando Rodriguez, at Ures, capital of the state of Sonora, on the 6th day of June, 185 (the last number torn).

JOSE MARIA MENDOZA.

(Rubric.)

Record, 39.

Neither at the trial, nor while the judges of the court below were in Sonora examining these title



papers, records and certificates, was any claim ever made or hinted at, that this was not a genuine document. The title papers were forwarded to the minister of the land department of the nation on the 6th day of June, A. D. 1847, and this certificate of that fact, and the one following (record, 39, 40), when considered in connection with other facts are to my mind conclusive of favorable action by the federal authorities. There is nothing in the record to warrant the statement that federal action was not taken; on the contrary, the record discloses the fact that such action *was* taken. But counsel seems to have overlooked the fact that this communication to the national government concerning the title, and the certificate thereto with its date torn (which must, when considered in connection with other facts, in some way be disposed of, otherwise knowledge and recognition of this grant by the general government is certain) is but a duplicate of the following, which is made part of the claimant's petition and is properly before the court:

To the Treasurer General of the State:

Jose Maria Mendoza, provisional commissary general of the state of Sonora, certifies that on this day he has directed, under a separate cover, and as a special matter, to his excellency, the minister of state by del despacho de hacienda

of the republic, an official communication of which the following is a copy:

**GENERAL COMMISSARY DEPARTMENT  
OF THE  
STATE OF SONORA.**

Sir—The Senor Don Fernando Rodriguez, a resident of the city of Hermosillo, has presented to me the title which was issued in his favor by the general treasury of the ancient state, on the 12th of April, 1838, for five square leagues of vacant lands for cultivation, registered by the said Rodriguez, contiguous to the rivers Gila and Colorado, in front of the confluence of the same and the point named Paso de los Algodones of the said river Colorado, in the northern part of this state, and which were for him surveyed, valued and were sold by the junta de almonedas, and were adjudicated in the manner as shown by the (testimonio autorizado) certified copy, which I have the honor to transmit to your excellency, to the end that the same may be presented to his excellency, the president of the republic, for which purpose the said Senor Rodriguez has presented the said title to me of the land situated in front of the confluence of the Gila and Colorado rivers and the Paso de los Algodones of the Colorado.

I have the honor to repeat to your excellency the consideration of my regard. God and liberty.

JOSE MARIA MENDOZA.

Ures, June 6, 1847.

To His Excellency, the Minister of State of Del Despacho de Hacienda de la Republica Mexico:

In witness whereof, I give this at the request of the interested party, Don Fernando Rodriguez, at Ures, the capital of the state of Sonora, on the 6th of June, 1847.

JOSE MARIA MENDOZA.

Record, 21.

These communications are unquestionably one and the same. It will, however, be noted that the one last quoted states that a *certified copy* of the title papers was forwarded to the supreme government. The difference between the two is slight and evidently one of translation; I am advised that the translation of the communication presented by claimant at the time he filed his petition, is correct. This answers counsel's inquiry as to how these title papers are found in the possession of claimant. A *certified copy* and *not* the *original* was forwarded to the minister of the land department.

Why should not Rodriguez have troubled himself about this title? He sold the land to his intimate

friend of many years, and it would have been strange indeed had he cared nothing about protecting the title to property for which he had been paid \$3,000. (Record, page 66.) Common honesty and fair dealing demanded that he do all that was done to protect his friend's estate. Who says these certificates were procured without Juan Robinson's knowledge or consent? No one but counsel, and the record answers the question (brief, page 17): "Who procured these certificates at the various dates they were and are alleged to have been made?" by saying they were procured by the persons who should have procured them—Mr. Rodriguez and Mr. Robinson. Some are made at the request of the former, others at the request of the "party in interest." The old fashioned notion of having title to what one sells and being honest enough to assist in protecting that title, should not be a subject of wonder or evidence of fraud. Robinson trusted Rodriguez. He did not even take a deed from him. He tells us:

"My relations with Fernando Rodriguez were of the most intimate and friendly nature. Fernando Rodriguez sold me the Ranch Paso de los Algodones in exchange for dry goods from my commercial house in Guaymas, in 1847, he at that time living in Hermosillo and I in the port of Guaymas, and, having

every confidence in his integrity, I did not exact from him the execution of the deed in my favor at that time. \* \* \* Fernando Rodriguez handed me the 'expediente' or original title deed obtained from the Sonora authorities at the time of selling me the property, and I held said document and other *important papers* until I disposed of the property El Paso de los Algodones, to The Colorado Commercial and Land Company in 1874. Fernando Rodriguez assured me that the original papers were gotten up in due conformity with the Mexican laws, and that they were full titles and covered in every respect the Ranch El Paso de los Algodones. \* \* \* In April, 1838, Fernando Rodriguez was considered a man of large means, who, independent of a large dry goods store which he kept at Hermosillo, had a cattle ranch a short distance from that city, and was also interested in mining pursuits, and was always looked upon as a man well to do."

Record, pages 62, 63, 65.

What other *important papers* besides the *expediente* were held by Mr. Robinson and delivered to his grantee, who filed them with the surveyor general of Arizona? None but these certificates, and from the office of the surveyor general they were taken and made a part of the record of this case. This

court well understands that these titles "passed from hand to hand by parol" and without formality.

Mr. Justice Baldwin, in *Strother vs. Lucas*, 12 Pet., page 447, says: "What would now be a splendid fortune would not, fifty years ago, be worth the clerk's fee for writing the deed which conveyed it, and was, therefore, passed from hand to hand by parol, with less formality than the sale of a beaver skin, which a bunch of wampum would buy. The simple settlers of St. Louis then little thought that the time would ever come when, under a stranger government, the sales of their poor possessions, made in the hall of government, at the church door after high mass, entered on the public archives as enduring records of the most solemn transactions, would ever be questioned by strict rules of law or evidence."

The remaining pages—18, 19, 20, 21 and 22—of the statement, discusses the testimony of Juan A. Robinson, and the question of record and possession, which will be given attention in their appropriate order.

We, too, invite especial attention to Mr. Robinson's testimony; and while it was given at a time when he was very feeble and long advanced in years, forgetting no doubt many important matters, it shows his entire faith in the integrity of this transaction. After

all this refined wandering in the statement of the case, and an attempt to cast suspicion on this title, it is said (brief, page 14): "The document, I admit, is in substantially the same form as others during that period, with the exceptions to which I shall call attention." And again, (pages 17 -18): "I now admit that the condition of the record tends strongly to prove the genuineness of the signatures of the various persons who purport to have signed the same, but does not entirely overthrow the internal evidence of ante-dating."

We will not attempt to fully consider all of the evidence in support of the grant, but will content ourselves with a brief reference to the same.

All of the officers of the state of Sonora—two United States senators, the governor, secretary of state, assistant secretary of state, treasurer general, attorney general, auditor of state, keeper of the archives, one of the judges of the Supreme Court, three lawyers of marked ability and former officers of the state, who have made careful investigation and study of grants made by Sonora—all testify that they have absolutely no doubt of the genuineness and legality of this grant. Mr. Forbes, the United States consul at Guaymas, who was for more than fifteen years translator of Spanish documents in the archives of the surveyor general of California, testifies that, in

his opinion, there is no doubt of the genuineness of the title papers in this case.

The expediente issued to Rodriguez is approved by Leonardo Escalante, the then governor of the state of Sonora; his son, the assistant secretary of state, testifies positively that his father's signature to the original paper is true and genuine.

Juan Jose Encinas certifies, on March 27, 1838, to the ability of Rodriguez to stock the land. His son testifies that the entire instrument was written by his father.

There are several certificates relating to the grant signed by Jose Maria Mendoza, as treasurer general of the state; his nephew, the prosecuting attorney, testifies that each of these signatures are the true and genuine signatures of Jose Maria Mendoza, and that one of the instruments written in 1841 is in his hand writing.

Governor Aguilar signs one of the instruments attached to the grant; his son, the treasurer general of the state, testifies that his father's signature thereto is genuine.

The secretary of state, probably the ablest man in the state, and one of its United States senators, testifies that he is personally acquainted with the signature of Mauricio Carrillo, who signs the title papers and proceedings in this case thirty-two different



times, and says that each of his signatures thereto is true and genuine; the same person testifies to the genuineness of the signatures of Governors Escalante, Pesquearia, and Aguilar.

The secretary of state has written a history of the governors of the state, and of its resources, and has devoted much of his time to the examination of the archives, and is entirely and thoroughly familiar with the same.

Other persons, in no wise connected with the offices of state, testify as to the genuineness of the signatures.

Judge Sanford was engaged for about four months in the examination of the archives of the state of Sonora, and investigated this title. He testifies that a large portion of the body of the testimonio and expediente, is in the hand writing of Jose Tamayo, who was, in the year 1838, a clerk in the office of the treasurer general of the state. A comparison of Tamayo's writing with the original papers, or with the photographic copies of the same, clearly shows that Judge Sanford is correct in his conclusion.

Mr. Aguilar, the present treasurer general of the state, and Mr. Rochin, the keeper of the archives, testify that the same hand writing as that of the body of the expediente and testimonio appears in many of the records of the treasurer general's office for the

year 1838. Mr. Aguilar also testifies that the seal attached to the title papers is the official seal of the treasurer general of the state of Sonora, used by that officer for the year 1838.

Juan A. Robinson testifies fully as to the genuineness of the title, and to the fact that he purchased the same in 1847.

The fact that the widow and children of Mr. Rodriguez, after his death, executed a deed to Mr. Robinson, corroborates him fully.

If this title is a fraud, when and by whom was the fraud committed? The answer must be, that the fraud was committed about the time of the cession of the land to the United States, and the motive for the commission of the fraud must have been to acquire land in this country, which was considered more valuable than land under the jurisdiction of the Mexican nation. This was the position formerly assumed by counsel for the United States. He now admits the genuineness of the signatures, but says there is a suspicion of ante-dating. The record and all the evidence negatives this suggestion, and a conclusive answer to it all is, that Governor Escalante, who approved the sale of this land to Rodriguez, in April, 1838, and whose signature to this approval is established beyond question as genuine, died in the city of San Francisco, in the spring of 1851, more than two

years before the United States negotiated for the Gadsen purchase.

Record, pages 105-106.

But if this title is spurious, why did these alleged forgers content themselves with taking but five square leagues of land, at the junction of the Colorado and Gila rivers? The testimony shows that there is as much more equally as good, adjacent to the land sold to Rodriguez, and within the United States. Why did they not take eleven square leagues of the land ceded to the United States?

Both Mr. Rodriguez and Mr. Robinson were men of the highest standing in their community; one for many years an officer of our own government; the other a merchant of means in the state of Sonora, and for years one of its trusted officers. If this grant is a fraud, they must have conspired with the officers of the state—not only the officers acting at the time of the issuance of the grant, but as well those occupying official positions, from the highest to the lowest, for many years after the title was issued. And for what was all this done? To obtain title to uninhabitable land on the frontier of the state, surrounded by hostile savages, which was entirely barren, and of but trifling value until reclaimed by the expenditure of large sums of money by this petitioner, in building irrigating ditches and making

other improvements so as to render it fit for cultivation.

We confidently submit that the court will conclude from an examination of all the facts and circumstances of this case, as testified to by the various witnesses (and all agree that each of the witnesses testifying for the petitioner are men of the very highest standing and intelligence in the state in which they reside) that the title papers of the Algodones grant are true and genuine.

Before discussing the laws of the Mexican nation, and those of the state of Sonora, we subjoin a brief history of the situation in Mexico, prior to the adoption of the constitutive act and the federal constitution, written by Mr. John H. Knaebel, an able lawyer and accomplished Spanish scholar.

In 1821 the fierce struggle which had been raging in New Spain proper between the viceroy and the revolutionary generals came to a culmination, nearly all the provinces having before this time revolted. O'Donoju, the viceroy, was a constitutional monarchist, and owed his commission largely to the influence of the American members of the Spanish cortes. (3 "Mexico," 741.) Fearing that otherwise Spain might lose her Mexican possessions, he was willing to make peace on any terms consistent with the royal dignity. Iturbide, after serving the king for ten years in bloody and ruthless antagonism to the revolu-

tion, turned traitor, and beguiling Guerrero, who was in command of a revolutionary army, joined with that general in the formulation of the "Plan of Iguala," which was proclaimed by Iturbide on the twenty-fourth of February, 1821. (3 "Mexico," 675, 678.) Less than a fortnight before this date nearly all the deputies from New Spain were assembled at Vera Cruz, in order to take passage there for the mother country, where they were expected to attend the approaching cortes. Iturbide endeavored to persuade them to remain and open a congress under his new project of government, but very few consented, and nearly all sailed for Spain on the thirteenth of February. (3 "Mexico," 676.)

The Plan of Iguala (3 "Mexico," 678) was first proclaimed in a form more abbreviated than that in which it was sent by Iturbide to the viceroy, although not essentially different. Its articles embraced, among others, a declaration of the independence of New Spain, with further declarations to the effect that its government should be a moderate monarchy in substantial conformity to the Spanish constitution ("con arreglo a la constitucion peculiar y adaptable del reino"); that its emperor should be Ferdinand VII., but if he should fail to appear personally in Mexico and take the oath, then there should be invited in his place the infante Don Carlos, or Don Francisco de Paula, or the Archduke Carlos, or some other member of the reigning family deemed suitable by the congress contemplated by the

plan; that, until the meeting of the congress and in order to bring that about and to carry into effect the purposes of the plan, a "*Junta*" (assembly or board) to be called "*Gubernativa*" (governing) should be formed; that the junta should govern in the name of Ferdinand VII. until his arrival and qualification, but treat as suspended all royal orders which might be issued by him meanwhile; that the congress ("*las cortes*") should determine whether to continue the junta or substitute therefor a regency pending the arrival of the person to be crowned; that in case Ferdinand VII. should not consent to come to Mexico, the junta, or the substituted regency, should govern in the name of the nation, while the selection and coronation of the emperor should be pending; that the congress should establish the constitution of the Mexican Empire; that all inhabitants of New Spain should be citizens; that the person and property of every citizen should be protected by the government; that the junta should take care that all branches of the state should remain without any alteration whatever, and all functionaries—political, ecclesiastical, civil and military—just the same as they then were ("15. La Junta cuidara de que todos los ramos del Estado queden sin alteracion ninguna y todos los empleados politicos, eclesiasticos, civiles y militares, en el estado mismo en que existen en el dia"); that until the organization of the congress all criminal proceedings should be conducted in strict conformity with the Span-

ish constitution ("21. Interin las cortes se establecen, se procedera en los delitos con total arreglo a la constitucion espanola"); and that, since the congress about to be convened had to be constituent (*constituyente*), it was necessary for the deputies to receive adequate powers in that behalf, and, since it was very important that the electors should know that their representatives were to be for the congress of Mexico, and not that of Madrid, the junta should prescribe just rules for the elections and indicate the time for them, as well as for the opening of congress.

This plan did not contain a word suggestive of Iturbide's secret ambition to gain the crown. On the twenty-fourth of August, 1821, however, when Iturbide and the viceroy, O'Donoju, having come to terms mutually satisfactory, entered into the so-called Treaty of Cordova, on the basis of the Plan of Iguala, there appeared in the treaty a modification of the plan, by which Iturbide secretly and subtly prepared the way for reaching the throne, by providing that, in case Ferdinand VII. and other members of his family, specifically named in the treaty, should refuse the crown, or not be acceptable, then it should be conferred on whomever the congress of the empire might designate ("el que las cortes del Imperio designen"). While this treaty confirmed substantially the Plan of Iguala, it made some modifications. (3 "Mexico," 739, 740.) Among other changes, it styled the proposed junta "*Junta Provisional Gubernativa*," and altered its

personnel, and it provided that the junta should have a president who might or might not be one of its members; that the junta should issue a manifesto to the public setting forth the purposes of its establishment and instructing the people regarding the proposed election of deputies to the congress; that, after the selection of its president, the junta should appoint a regency composed of three persons from within or without its own body; that the executive power should reside in the regency, and it should govern in the name of the monarch, "until he should grasp the sceptre of the empire;" that, meantime, the junta should govern in conformity with the *existing laws*, in everything not opposed to the Plan of Iguala, and during the formation of the constitution by the congress ("XII. Instalada la Junta provisional gubernara interinamente conforme a las leyes vigentes en todo lo que no se oponga al Plan de Iguala, y mientras las Cortes formen la constitucion del Estado"); that the regency should proceed to call the congress together according to the method determined by the junta, this being declared to be conformable to the spirit of article XXIV. of the said plan; and that the executive power should reside in the regency and the legislative in the congress; but that the junta, until the meeting of the congress, should exercise the legislative power in urgent cases, acting in accord with the regency, and also act as an auxiliary and consulting body for the latter.



Always stimulated by his kingly ambition, Iturbide, afterwards, nominated as "*La Junta provisional gubernativa*" thirty-eight favorites, all of whom were either noblemen or affiliated with the aristocracy (4 "*Mexico*," 11), although urged by a friend to invite the co-operation of the provincial deputations in fixing the personnel of the junta. (*Ib.*, 13.) Having organized and proclaimed the junta, on the twenty-eighth of September, 1821, with Iturbide as its president, he and the other members of that body signed and promulgated on that day the declaration of independence of the Mexican Empire ("*Acta de Independencia del Imperio Mexicano*"), which, in so many words, professed conformity with the principles laid down in the Plan of Iguala and the Treaty of Cordova. ("Con arreglo a las bases que en el Plan de Iguala y tratados de Cordoba establecio sabiamente el primer jefe del ejercito imperial de las tres garantias.") *Ib.*, page 17.

This declaration of independence, limited as was its scope, was received with favor in nearly all the provinces, although some dissented and insisted on maintaining their respective autonomies. Such is the ground on which it is not unusual to fix the date of Mexican "independence" as the twenty-eighth of September, 1821.

In pretended pursuance of the Plan of Iguala and the Treaty of Cordova, and under the "*Acta de Independencia*," based on those instruments, the junta proceeded to call a congress of deputies from the several provinces, as well as to make

provisional and arbitrary selection of persons to act in the place of absent deputies or in the name of provinces that might fail to hold elections, and it organized a regency with Iturbide at the head.

Some of the provincial elections of deputies were held according to the provisions of the Spanish constitution of 1820, and others according to the terms of the call of the junta and regency, but, notwithstanding these and other irregularities, the congress contemplated by the Plan of Iguala and the Treaty of Cordova convened and organized in the city of Mexico, on the 24th of February, 1822. (*Ib.*, pages 52, 53, 55.)

It was soon made manifest that this body, called to make a constitution, was, in spite of the stormy opposition of a large minority, many of whom were arbitrarily jailed by Iturbide, turned into his willing tool. It failed to propose a constitution, but it succeeded, by an illegal vote, in declaring Iturbide hereditary emperor of the "Mexican Empire." (4 "Mexico," 77.) Accordingly, he was crowned on the 21st of July, 1822. All this occasioned the express protest of several provinces, by their political chiefs, provincial deputations and ayuntamientos, as in the case of Nuevo Santander. (*Ib.*, 83.) For three months, Iturbide sought to overawe the congress, while that body resented his interference, and then, by his unlawful decree of the 31st of October, 1822, as

well as by force, he dissolved and dispersed it. (*Ib.*, 85.)

Thereupon, Iturbide, without any pretense of constitutional or statutory right, created a new junta, called *La Junta instituyente*, to take the place of the junta which had ceased to exist on the organization of the congress, and selected as its members two persons as deputies for each of some of the provinces and one as deputy for each of the others. (*Ib.*, 85.) In consequence of these tyrannical proceedings on the part of Iturbide, new disturbances arose in many of the provinces, and, on the 6th of December, 1822, General Santa Anna, who had abandoned Iturbide and, entering Vera Cruz, gained over its garrison, there formulated and proclaimed the "Plan of Vera Cruz," declaring, among other things, that citizens should enjoy their respective rights of persons and property in conformity with the [Spanish] constitution and the laws; that the governmental functionaries should continue in their offices and faculties. ("Los ramos del estado quedaran sin variacion alguna, y todos los empleados politicos, civiles y militares se conservaran en sus empleos y destinos, menos los que se opongan al actual sistema, pues a estos con conocimiento de causa se las suspendera hasta la resolucion del congreso."); that civil and criminal causes should proceed according to the Spanish constitution and the existing laws and decrees promulgated up to the time of the audacious extinction of the congress ("En las causas

civiles y criminales procederan los jueces con arreglo a la constitution espanola, leyes y decretos vigentes expedidos hasta la temeraria extincion del congreso en todo aquello que no se oponga a la verdadera libertad de la patria"); that certain provisions proclaimed on the 2d inst., by Santa Anna, on consultation with the provisional deputation of Vera Cruz, should be observed; and that the provisions of the "Plan" should be without prejudice to the faculties of the sovereign congress ("las altas facultades del soberano congreso") in which the power to modify them was thereby expressly acknowledged. (4 "Mexico," 86, 87.)

Echavarri and the other imperial generals, engaged in the siege of Vera Cruz against Santa Anna, combined with him, on the 1st of February, 1823, in the formulation of still another government project—called the "Acta de Casa Mata"—wherein, among other things, it was declared that the sovereignty residing in the nation, the congress should be installed in the shortest possible time, upon the same basis first prescribed ("bajo las bases prescritas para las primeras"); that, since some of the deputies to the dissolved congress were, by reason of their liberal ideas and strength of character, worthy of public esteem, while others had lost the public confidence, the provinces should be at liberty to re-elect the former and to substitute more suitable persons in place of the latter; that, pending an understanding between the supreme govern-

ment and the army, the provincial deputation of Vera Cruz might exercise administrative faculties; and that the army should be stationed in the cities and wherever emergencies might require, support the congress in its deliberations, and not disband, except on the order of that body. (*Ib.*, 88, 89.)

This plan, with its formidable military support, and its acceptance in many provinces, finally compelled Iturbide to issue a decree on the 4th of March, 1823, recalling the deputies for the reconvention of the congress, and, in consequence, a *soi disant* session of that body opened on the 7th of the same month, although, owing to the absence of distrustful deputies, a legal quorum had not yet gathered. (*Ib.*, 90, 91.) Before this body, Iturbide tendered his abdication as emperor on the 20th of March, 1823, although by its terms he reserved the supreme authority with liberty to delegate its exercise to persons worthy of the confidence of the congress, until it should pass upon the abdication. Before making a final disposition of the question of abdication, the so-called congress undertook to appoint a provisional government called the "Poder Ejecutivo," composed of Bravo, Victoria and Negrete, of whom the first two were absent, their places being supplied temporarily by Michelena and Dominguez. On the 7th of April following, the congress declared, among other things, that the coronation of Iturbide was an act of violence and was null; that all resulting acts were il-

legal and subject to confirmation by the "existing government"—*actual gobierno*; that the supreme executive power should promote the speedy departure of Iturbide from the national territory; and that there never was any right to subject the Mexican nation to any law or treaty, except such right as lay in the nation itself, or its elected representatives, according to the public law of free nations; and, in consequence, the congress considered the Plan of Iguala and the Treaty of Cordova as non-existent, and that it remained absolutely at liberty to adopt that form of government which it should deem suitable. (*Ib.*, 93, 94.)

The recklessness and absurdity of these declarations are abundantly pointed out by Olavarria. (*Ib.*, 94, 95.) We thus find that a congress founded on the Plan of Iguala and the Treaty of Cordova, and elected for the express purpose of forming a constitutional monarchy accordingly, actually assumed to destroy the very foundations of its legal existence, and, by tyrannical usurpation, to reform the government on an entirely inconsistent theory. Such acts bear only a *de facto* character, and could not *per se* override the existing *de jure et de facto* legal establishments, laws, usages and customs of the provinces. It is evident that the executive government—"Poder Ejecutivo"—born of such usurpation, possessed no *de jure* authority whatever.

No wonder that temporary anarchy followed, and that many provinces,—*quasi-autonomies*,

with their political chiefs, provincial deputations, ayuntamientos and other official authorities—openly asserted themselves against the lawless proceedings of the alleged congress and “executive power.” (*Ib.*, 98, 99.)

On the 21st of May, 1823, the “congress” decreed a call upon the provinces to elect deputies to a new constituent congress, upon a plan of election which met with general favor among the people in the provinces, although some of the provinces still resisted all the measures emanating from the capital. (*Ib.*, 99.) This new scheme involved the formulation of proposed bases of government on which the new deputies were expected to act in the adoption of a federal constitution, and these bases, printed in circulars, were published among the electors. They embraced substantially the provisions which the new constituent congress, which convened on the 7th of November, 1823, adopted as the *Acta Constitutiva*. (*Ib.*, 99.)

The constituent congress thus called was, in effect, a constitutional convention. The provinces elected their deputies on the express understanding that all were on an equal footing, and that each, either by itself, or in combination with contiguous provinces, should become a “free sovereign and independent state.” Sonora and Sinaloa were represented in the convention on this well understood plan. After the convention had been in session for upwards of two months, the “*Acta Constitutiva*,” signed by the deputies

on the 31st of January, 1824, declared (in its sixth article) not only that the integral parts of the nation were "free, sovereign and independent states," but (in the seventh article) that among the "states at present comprising the federation" was "the internal state of the west, composed of the provinces of Sonora and Sinaloa." (1 *White*, 375.)

[In the foregoing summary of relevant events of the Mexican revolution, most of the references are made to Zarate's "La Guerra de la Independencia," which composes Tomo III. of the work, published at Mexico and Barcelona (under the editorship of the historian, Palacio), entitled "Mexico a Traves de Los Siglos," and to Olavarria y Ferrari's "Mexico Independiente," which composes Tomo IV. of that publication.]

It is admitted that either the supreme government of Mexico or the state of Sonora had a right to make the grant in question. The court below did not deem it necessary to decide as to which, the state or the nation, was seized with the title or vested with the power to make the grant, and observed: "Evidently, if the state of Sonora had an existence and owned the land, or was authorized to dispose of it, the proceedings of the officers resulting in the sale were sufficient to pass the title." "It is our opinion that if it be held that the Mexican nation alone could make the grant, the proceedings of the officers shown in



the evidence were sufficient to vest at least an equitable, if not a full legal title in Rodriguez against the nation." And the decree below was based on the theory that both the nation and the state parted with their title to the land. We insist that in this case the determination of the question of the right of the state to pass title to this land is not necessary to uphold the decree, for the reason that the evidence is clear that the sale was approved by the supreme government and made by its officers—the junta de almoneda (board of sale)—as well as by officers acting or claiming to act on behalf of the state government. Should the court, therefore, be of opinion that the grant was made by both governments, it will be unnecessary to pursue the subject further.

*Did Sonora own her public lands, and did she have a right to dispose of them as directed by her legislature?*

She asserted this ownership in her constitution and legislation.

Section 16, Article 293, Constitution of  
Sonora and Sinaloa, 1825.

Laws of Sonora and Sinaloa, May 20, 1825,  
Reynolds, page 129.

Laws of Sonora, July 11, 1834.

Id., page 186.

And this declaration of ownership of its lands was never annulled, interfered with or questioned by the authorities of any constitutional government of Mexico, or by the executive or legislative departments of any government, or by any dictator claiming any right or authority prior to 1838. But to arrive at a proper understanding of this question, it becomes necessary to examine the constitutive act, the constitutions of the nation and the state, and the legislation of the supreme and state governments relating to public lands.

The constitutive act of the Mexican federation, adopted January 31, 1824, declares as follows:

Article 5. "The nation adopts for the form of its government, a popular, representative and federal republic."

Article 6. "Its integral parts are free, sovereign and independent states, in so far as regards exclusively its internal administration according to the rules laid down in this act and in the general constitution."

Article 7. "The states at present comprising the federation are the following, viz.: Guanajuato, the internal state of the west, composed of the provinces of Sonora and Sinaloa," etc., etc.; "the Californias and the district of Colima will for the

present be territories of the federation, and directly subject to its supreme power."

White's Land Laws in California and Texas, 375.

The constitution of October 4, 1824, makes the following declaration:

Article 4. "The Mexican nation adopts for the form of its government a popular, representative and federal republic."

Article 5. "The constituent parts of the federation are the following states and territories, viz.: The states of Sonora and Sinaloa, etc., etc.; the territories of Lower California, Upper California, Colima and Santa Fe, De Nuevo Mexico."

White, 308.

Article 50. "The exclusive powers possessed by the general congress are the following, viz.:

Subdivision 30. "To grant laws and decrees for the interior administration of the territories."

Subdivision 31. "To dictate all laws and decrees which may conduce to accomplish the object spoken of in the 49th article, *without intermeddling with the interior administration of the states.*"

White, 393-95.

"Article 137. The following are the attributes of the Supreme Court:

"1. To take cognizance of the disputes that may arise between the different states of the union, whenever there arises litigation in relation to the same, requiring a formal decree, and that arising between a state and one or more of its inhabitants, or between individuals *in relation to lands under concession from different states*, without prejudice to the right of the parties to claim the concession from the party which granted it."

White, 405.

Article 161, Subdivision 8. "To send annually to each of the chambers of congress a circumstantial account of the receipts and expenditures of the treasuries in their respective districts, with the origin of each, the state of agriculture, commerce and manufactures, of the new modes of industry which may be usefully introduced and protected, as well as the population and the means of protecting and augmenting the same."

White, 409.

Article 165. "Congress alone has the right to interpret the constitution in doubtful cases."

Substantially the same provision as the latter is engrafted in the constitution of Sonora and Sinaloa, that state declaring in addition to the above: "The tribunals and courts of justice being authorized solely for applying the law, shall never interpret the same nor suspend their execution."

Constitution of Sonora and Sinaloa, 1825.

The constitution of the republic and the constitution of the state reserved the power to declare an act of the national congress or state legislature void for repugnance to the constitution, to the legislative departments of their respective governments.

It will not escape observation that neither in the constitutive act nor in the constitution are creative words used. It is not said that the provinces under the Spanish *regime*, and the short-lived empire, are hereby erected into states, or that they shall be states hereafter, or that the Mexican territory shall be divided into states. They *ARE* states, sovereign, free and independent. The language of the general constitutive congress of the Mexican nation is as explicit, positive and unqualified as that of the general congress of the United States of America, when it solemnly published and declared: "That these united colonies are, and of right ought to be, free and independent states."

When the troublous reign of Iturbide, inaugurated so short a time before, had come to its end, and the Mexican people were again confronted with the problem of government, what more natural than to turn to the "flourishing republic" of their northern neighbors, the United States of America, for a model?

An examination of the constitutive act and the federal constitution makes it apparent that in framing

their constitution, such was the intention of the Mexican people, and as near as different conditions would admit, base their government on the same great fundamental principles, with two classes of sovereignty. An *exterior* sovereignty, to treat as a nation with other nations, and an *interior* sovereignty for each state to govern itself, free and independent of the others, and also independent of the federal government in all matters relating to the internal affairs of the state. Each of these sovereign powers, within their respective spheres, was independent of the other.

The address of the general constituent congress to the Mexican people, explaining and urging the adoption of the constitution, makes this purpose apparent. Among other things this address says:

"The division of the states, the installation of its respective legislatures, and the construction of a multitude of establishments which have arisen in the short period of eleven months, furnishes evidence that congress has fulfilled, in a great degree, the hopes of the people, without pretending on this account to attribute to itself all the glory of such prosperous principles, and still less the original invention of the institutions which it has dictated. It had fortunately to do with a people obedient to the voice of duty, and a *model to imitate*, in the flourishing republic of our neighbors to the north. \* \* \*."

"What relations of convenience or uniformity could possibly exist between the burning soil of Vera Cruz and the frozen mountains of New Mexico? How could the same institutions govern the inhabitants of California and Sonora, and those of Yucatan and Tamaulipas? \* \* \* The inhabitants of Tamaulipas and Coahuila will reduce their code to a hundred articles, while the inhabitants of Mexico and Jalisco will be on a level with the great nations which have advanced in the career of social order. These are the advantages of the federal system. *It gives each people the right of selecting for itself laws analogous to its customs, locality and other circumstances; to dedicate itself without impediment to the creation and improvement of those branches of industry which it may deem best calculated to promote its prosperity.* \* \* \* *To you, therefore, legislators of the states, it belongs to develop the system of our fundamental law, the corner stone of which is the exercise of public and private virtue."*

White, 380.

No stronger declaration of the intention of the founders of the nation to leave to the people of the several states the government and control of their internal affairs could possibly have been made, than that contained in this patriotic address.

The authors of this appeal to the people of Mexico well understood that in imitating the government of the United States, with which their own people were

familiar, the new government would receive the earnest co-operation of a liberty-loving people, anxious for self-government.

The states formed the general government; the general government did not create the states. The constitutive act was the act of the "Federation." The constitution was the "*Federal Constitution of the United Mexican States.*"

The word "Federation" imports a treaty, a compact or agreement between two or more nations, states or parties. The constitution declares the nation to be one of a federation, and that the constituent parts of the federation are the following states and territories, naming Sonora, among others.

The following, from President Polk, in 1846, fully sustains the views here presented:

"In the year 1824, Mexico established a federal constitution, under which the Mexican republic was composed of a number of sovereign states, confederated together in a federal union similar to our own. Each of these states had its own executive, legislature and judiciary, and for all except federal purposes, was as independent of the general government, and that of other states, as is Pennsylvania or Virginia under our constitution. Texas and Coahuila united and formed one of these Mexican states. The state constitution which they adopted, and which was approved by the Mexican confederacy, asserted that



they were 'free and independent of the other Mexican united states, and of every other power and dominion whatsoever;' and proclaimed the great principle of human liberty, that the 'sovereignty of a state resides, originally and essentially, in the general mass of the individuals who compose it.' To the government under this constitution, as well as to that under the federal constitution, the people of Texas owed allegiance.

"Emigrants from foreign countries, including the United States, were invited by the colonization laws of the state and of the federal government, to settle in Texas. Advantageous terms were offered to induce them to leave their own country and become Mexican citizens. This invitation was accepted by many of our citizens, in the full faith that in their new home they would be governed by laws enacted by representatives elected by themselves, and that their lives, liberty and property would be protected by constitutional guaranties similar to those which existed in the republic they had left. Under a government thus organized they continued until the year 1835, when a military revolution broke out in the city of Mexico, which entirely subverted the federal and state constitutions, and placed a military dictator at the head of the government.

"By a sweeping decree of a congress subservient to the will of the dictator, the several state constitutions were abolished, and the states

themselves converted into mere departments of the central government. The people of Texas were unwilling to submit to this usurpation. Resistance to such tyranny became a high duty. Texas was fully absolved from any allegiance to the central government of Mexico from the moment that government had abolished her state constitution and in its place substituted an arbitrary and despotic central government."

President Polk's Second Annual Message,  
December 8, 1846.

So we might well contend that, under such a system, confessedly modeled after that of their neighbors to the north, the fee of public lands within the borders of a state remained in that state, in the absence of any act of relinquishment to the general government by the state; as, in our own country, the thirteen colonies, afterwards the thirteen states of the federal union, notwithstanding the union retained the ownership in fee of their public lands.

I understand that there is authority against this theory of the organization of the Mexican government, the principle of which is the language of Mr. Justice Hemphill in *Texas vs. Thorne*, 3 Texas, 499, quoted at pages 61, 62 of brief for the government. Attention is called to this case, and it will be noted that Justice Hemphill did not consider the independent character of the provinces as they existed from

the date of the separation from Spain until the adoption of the constitution in 1824. He says, at page 505: "It will not be material, however, to prosecute an inquiry into the rights which might perhaps be claimed for a state on the ground of its constituting an integral part of the government existing previous to the confederacy." The value of Justice Hemphill's observations is largely destroyed by the further statement made by him, page 505: "Nor did she (Texas) evince, until a late period of her existence, if ever, that she claimed any right or control over the public lands, except such as was conceded to her by virtue of the national law (August 18, 1824) to which we have referred." This statement is so unquestionably at variance with the facts as to impress one that he had not given these questions careful or full consideration.

From the very moment of her existence, Coahuila and Texas asserted the right to the vacant lands within her borders.

Article XV. of the constitution of Coahuila and Texas, asserts that, "All kinds of vacant property within its limits, and all intestate property without legal successor, shall belong to the state."

And article XCVII. provided that congress had the power to "Enact what is proper for the administra-

tion, preservation and alienation of the property of the state."

Speaking of these two articles, at page 527, in *Chambers vs. Fisk*, 22 Texas, the Supreme Court of that state say: "Here is an open, express claim of right to the vacant domain in the state, with full power of disposition."

It seems to me important to remember that at least from the time of the so-called declaration of independence—September, 1821—the provinces were independent of any supreme authority, and their autonomy was recognized in the constitutive act and in the constitution. They clearly did not owe allegiance to the kingly pretensions of Iturbide or to any government which he claimed to have organized, nor did they acquiesce or submit to any form or plan of government other than the one of the constitution of 1824. So far as the relations of existing governments to the provinces were concerned before this date, they had not even the legal status of the powerful, to which the weak must give allegiance.

But, if we be wrong in contending for the autonomy of the provinces before the adoption of the constitutive act, and it be considered that the states had no existence prior to this act, then by force of its provisions, and before the adoption of the constitution of the nation, the states thereby created and named

thereafterward bore the same relation to the general government as if they had been free and independent states prior to the adoption of the constitutive act.

It becomes important, therefore, to examine the situation in the United States in regard to the relative rights of the federal government, and those of the several states, relating to the public lands.

At an early period of the war of the revolution, the question, whether the vacant lands within the boundaries of particular states, belonged to them exclusively, or became the joint property of all the states, was a momentous one, and threatened the existence of the confederacy. This question was compromised. It was settled by concessions and the adoption of the articles of confederacy.

In *Fletcher vs. Peck*, 6 Cranch, page 142, Chief Justice Marshall said:

“The question whether the vacant lands within the United States became a joint property, or belonged to the separate states, was a momentous question, which at one time threatened to shake the American confederacy to its foundations. This important and dangerous contest has been compromised, and the compromise is not now to be disturbed.”

To such lands as belonged to the respective colonial governments, the respective states which succeeded to the different colonies became entitled

and acquired the power to dispose of them as they might provide by local laws.

3 Washburn on Real Property, 164-165.

Johnson vs. McIntosh, 8 Wheat., 543.

Martin vs. Waddell, 16 Peters, 367.

Worcester vs. Georgia, 6 Peters, 544.

Tenett vs. Taylor, 9 Cranch, 50.

The states which possessed lands by virtue of original ownership are the thirteen colonies and Texas. In these states, lands not held as the private property of individuals, or *ceded by the state to the general government*, belong to the state within which they lie.

Kagama vs. United States, 118 U. S., 228.

The contention concerning ownership of public lands delayed the adoption of the articles of the confederacy from November, 1777, until March, 1781. In 1780, congress, finding the controversy could not be otherwise terminated, recommended that the states make liberal concessions. Virginia and New York agreeing to this, the articles of confederacy were signed, and cessions of territory made by each of the states in a manner satisfactory to all.

It must be evident that Mexico, in imitating our government and adopting it as a model, was familiar

with our history, our legislation, and the decisions of our courts.

Article III., section 2, of our own constitution, provides that the judicial power shall extend to all cases "*between citizens of the same state claiming lands under grants of different states.*" This was necessary, as the states owned the fee in the public lands within their respective limits.

A like provision is found in the Mexican constitution, quoted, *supra*, White, 405, wherein it is provided that the Supreme Court of the Mexican nation shall take cognizance of disputes which may arise "*between individuals in relation to lands under sessions from the different states.*" It would not seem possible that any other construction could be placed upon this language *than that the states had lands to grant*; otherwise, there would have been no concessions to be adjudicated. If such is not a proper construction of this language, then that part of the constitution is wholly meaningless. This court will not say that the framers of that instrument were using idle words. It is a statement by implication, that the public lands belong to the states. What is implied in a statute is as much a part of it as what is expressed.

Wilson Co. vs. Third National Bank of  
Nashville, 103 U. S., 770.

Gelpeck vs. Dubuque, 1 Wall., 222.

In *Ex Parte Yarborough*, 110 U. S., 651, this court said:

"In construing the constitution of the United States, what is *implied* is as much a part of the instrument as what is *expressed*."

See, also:

Rhode Island vs. Massachusetts, 12 Pet., 657.

In the Mexican constitution of 1824, there were certain articles prohibiting the states from doing certain enumerated acts, but nowhere therein is there any prohibition against the states making grants of public lands.

The fact is, that none of the constitutions or "plans" of government contained any provision surrendering the rights of the states to the public lands to the federal government, until the constitution of February 5, 1857, which is now in force. Under paragraph 3, sub-title "Of the Powers of Congress," article LXXII. of that instrument, we find the following: "Congress has the power \* \* \* 24. To fix the rules to which the occupation and alienation of public lands ought to be subject, and the price of said lands."

Hall, page 102.

And under title 6, "General Provisions," we find the following as article CXVII.: "The powers that



are not expressly granted by this constitution to the federal functionaries, are understood as reserved to the states."

Idem, page 109.

While this is not the exact phraseology of either the constitution of 1824 or 1836, yet each of these instruments contain certain prohibitory powers; but neither of them prohibited the states from granting their public lands, nor did they provide for the federal government to do so. If the states were not the owners of the public land within their respective demarcations prior to the adoption of the constitution of 1857, why did the framers of that instrument deem it necessary to authorize congress to fix the rules for their occupation and alienation, and the price to be paid therefor? If the nation was the owner of these lands, this provision would not be found in the organic law of 1857. If the ownership in the nation to these lands before that time had been recognized and understood, the congress of the nation would certainly have had ample power and authority to dispose of them without direct constitutional authorization, and a grant of power from the states to the federal government would have been unnecessary.

It should be kept in mind that the congress of the nation had the constitutional right to annul the de-

crees or laws of any of the states of the republic. This right it sometimes exercised, and at one time declared null one of the laws of the legislature of Sonora—law of May 6, 1850—relating to the colonization of public lands within the boundary limits, for the reason, as stated in the decree nullifying this law: “Because it is opposed to article XI. of the act of reforms, which says: ‘It is the exclusive right of the general congress to establish bases for colonization, and to enact laws under which the powers of the union are to perform their constitutional functions.’ And to article II. of the general law, promulgated April 25, 1835, which says:

“‘Article 2. In the exercise of the power reserved to the general congress, in article VII. of said law, of August 18, 1824, the frontier and littoral states are prohibited from alienating their vacant lands for colonization, until the regulations to be observed in carrying it out are established.’”

Compiled Laws of Mexico, May 14, 1851.

This colonization law of Sonora—May 6, 1850—annulled by the Mexican congress, was the first law that Sonora passed on the subject of colonization. The decree of the Mexican congress annulling this act of the legislature of Sonora is printed in the work of Mr. Reynolds’ Spanish and Mexican Land Laws,

page 296, under a manifestly misleading heading. There is no pretense that this law was declared unconstitutional on account of a declaration of ownership by Sonora, of her public lands. It was the manner of their colonization against which the general government was decreeing.

The Mexican congress, in annulling this colonization law of Sonora, and the one of Coahuila and Texas *infra*, was asserting a right which it conceived to pertain exclusively to the *nation*; that is, the national authority reserved to itself the right of determining when and how lands along the coast and frontier should be colonized, deeming prudent regulations on this subject necessary for the peace and safety of the nation.

“But while a judicious policy might forbid the settlement of large bodies of foreigners on the boundaries and sea coast, we cannot impute to them (the supreme government of Mexico) the weakness or folly of confining their native citizens to the interior, and thus leave their sea coast a wilderness without population. On the contrary, the same considerations of policy which excluded foreigners, would encourage the settlement of natives within those bounds. The statute books of Mexico abound in acts offering every inducement to Mexican families to settle on the frontiers.”

Arguelo vs. United States, 18 How., 539.

"There were portions of the general colonization law (referring to the law of August 18, 1824) which did relate to matters pertaining particularly to the federation, as the colonization of the littoral leagues, the introduction and naturalization of foreigners, payment of army, etc., as recognized by both the state and federal governments."

Chambers vs. Fisk, 22 Texas, 504.

"The consent of the federal executive of Mexico to the grant of a native Mexican of land within the border or littoral leagues was never necessary, but that such consent was only necessary to a grant to a foreigner, or to a contract to colonize, whether the contractor was a foreigner or a Mexican."

Wilcox vs. Chambers, 26 Texas, 123.

And the national congress also annulled the laws of the legislature of Coahuila and Texas, relating to colonization, for the reason as stated in its decree:

"Article 1. The decree of the legislature of Coahuila and Texas, of March 14 of the present year, is, in its articles 1 and 2, contrary to the law of August 18, 1824; consequently the alienations made by virtue of said decree are null and of no value.

"2. In the exercise of the powers the general government reserved to itself, in article 7 of said law of August 18, 1824, the border and littoral

states are prohibited from alienating their public lands for colonization thereon, until the rules they shall observe in doing so are established.

"3. If any of them desire to alienate any part of their public lands, they shall not have the power to do so without the approval of the general government, which, in every case, shall be preferred if it sees fit to take them, *and shall give the states the proper indemnity.*

"4. The general government can, under articles 3 and 4 of the law of April 6, 1830, by virtue of its preference right, purchase of the state of Coahuila and Texas the four hundred sitios it says it is under the necessity of selling."

Compiled Laws, April 25, 1825, volume 3,  
page 42.

The law of August 18, 1824, was a colonization act, and has been so declared by different decisions of this court. *Arguëllo vs. U. S.*, 18 How., 539; *Wilcox vs. Chambers*, 26 Texas, 183. And it was against a violation of these colonization acts that the national legislation was directed in annulling the decrees of the states named.

The fourth article of the foregoing decree clearly recognizes the right of the state of Coahuila and Texas to her vacant lands and says the nation may purchase them in accordance with the law of the national congress of April 6, 1830, sections 3 and 4,

which law contains an explicit declaration that the states owned their public lands.

"Article 3. The government shall appoint one or more commissioners, whose duty it shall be to visit the colonies of the frontier states, to contract with the legislatures of said states for the purchase by the nation of lands suitable for the establishment of new colonies of Mexicans and foreigners. \* \* \*.

"Article 4. The executive is empowered to take possession of such lands as may be suitable for fortifications and arsenals, and for the new colonies, *indemnifying the state in which such lands are situate*, by a deduction from the debt due by such state to the federation."

Rockwell, 621.

Reynolds, page 148.

Compiled Mexican Laws, volume 2, page 238, No. 809.

Mr. Reynolds is in error in saying (Reynolds, page 34) that the decree of April 23, 1835, prohibits the frontier littoral states from "selling the vacant lands within their boundaries, without the previous approval of the general government. The decree states that "the border and littoral states are prohibited from alienating their public lands for *colonization thereon*" until the rules they shall observe in so doing are established.

Counsel for the United States mentions this law (brief, page 72), and says: "This is an evident attempt to peacefully withdraw from the states, not the ownership of the lands, but the right to pass laws regulating colonization under the law of August 18, 1824." We fail to comprehend what or where counsel discovers anything either in the law itself or in the history or legislation of that period to warrant this new and startling proposition. We can scarcely read the history of those times and believe that Mexico was so "peacefully" dealing with the states concerning a matter of such supreme importance as one from which the greatest public revenue might be derived, and we cannot believe that she would conceive it to be her duty to pass a law of the national congress recognizing the rights of the states to do that which she wished them not to do.

Of this law of April 6, 1830, the Supreme Court of Texas says: "It contains a plain and unequivocal recognition of the full right of the state to the vacant domain in her limits, and of its right to dispose of it."

Chambers vs. Fisk, 22 Texas, at page 529.

"The obnoxious article of the law of the 6th of April, 1830, prohibiting the ingress of foreigners

from bordering nations was repealed on the 21st of November, 1833."

The Republic vs. Thorn, 3d Texas, at page 507 (citing Colln. Decretos, 33, 34, 35, page 74.)

We do not find the decree repealing this section in Reynolds' compilation. I am, however, advised that the repaling act in no manner affects sections 3 and 4, quoted *supra*.

And when it is considered how jealous of its power (particularly in matters affecting its public revenue) the general government of Mexico always was, might we not, if the officials of the state of Sonora, in authorizing and making sale of vacant lands, usurped powers, reasonably expect to find some law or decree disproving and annulling their acts? There is no law of the general government annulling the acts of Sonora during the time she was making these grants, or even questioning the validity of her transactions or legislation on the subject.

On the 20th of May, 1825, the congress of the state of Sonora and Sinaloa passed a law providing for the sale of the vacant lands of the state, and at the time of the adoption of the constitution of Sonora and Sinaloa, in November, 1825, a declaration of ownership of these public lands was expressly embodied in that instrument.



The legislature of Sonora and Sinaloa petitioned the national congress to divide the territory of that state into two states, which was done by national enactment, October 13, 1830.

Compiled Laws, Mexico, volume 2, page 231.

On the 10th day of June, 1833, Sonora passed a law granting extension of time for perfecting titles to land granted by that state, which law was followed by another of December 30, 1834, again extending the time for this purpose, and thereafter the law of the original state of Sonora and Sinaloa was enlarged by the congress of Sonora, on the 11th day of July, 1834, by the enactment of the law known as the "*Organic Law of the Treasury*," in which provision was made for the sale of the vacant lands of the state for the benefit of the state treasury. By the former enactment the state of Sonora and Sinaloa, and by the latter, the state of Sonora assumed the right to dispose of her public lands for the benefit of the state treasury, and for many years acted under them, sold her lands, and received the price into her own treasury without interference or protest on the part of the general government.

The government could not have been ignorant of the fact that the states were raising money in this

way, because every year it was reported to the chamber of the national congress.

Article CLXI., subdivision 8, national constitution, 1824, reads:

"To send annually to each of the chambers of congress a circumstantial account of the receipts and expenditures of the treasuries in their respective districts, with the origin of each, the state of agriculture, commerce and manufactures, of the new modes of industry which may be usefully introduced and protected, as well as the population and the means of protecting and augmenting the same."

White, 409.

Subdivision IX. of the same article is as follows:

"To forward to the chambers and in the recess to the council of government and the executive power, a copy of their constitution and laws."

On the 26th day of March, 1826, the Mexican congress passed a law requiring the "commissaries general" to transmit to the general government a collection of all the decrees, orders and regulations passed by the congress of each state.

(2 Galvan's Nueva Collection, page 634.)

Now then, was it possible for the general government to have been ignorant of the constitution and

laws of Sonora and of the fact that she was disposing of her public lands?

The following language, used by Mr. Chief Justice Chase in speaking of a law of the territory of Utah, well applies here:

"In the first place, we observe that the law has received the implied sanction of congress. It was adopted in 1859. It has been upon the statute book for more than twelve years. It must have been transmitted to congress soon after it was enacted, for it was the duty of the secretary of the territory to transmit to that body copies of all laws on or before the first of the next December in each year. The simple disapproval by congress at any time would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

Clinton vs. Englebrecht et al, 13 Wall,  
434-49.

We believe then that it is fair to say that these laws of the state and the manner of their execution were well known to the Mexican national congress, executive and other officials. They were not disapproved; other laws were, and the law will presume that these acts were acquiesced in and approved.

"No court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain

or France, or any other nation, had misunderstood their own statutes, and, therefore, erect itself into a tribunal to correct such misunderstandings."

Chief Justice Marshall in *Elmendorf vs. Taylor*, 10 Wheat., 152.

Within a few months of the change of government in 1836, and the legislation leading up to this new system, we find the congress of the nation providing for the payment of \$1,000,000, granted to Augustin Iturbide by the provisional council of government, in 1822, as a reward for the sublime distinction he obtained by securing the independence of his country, and also providing that the twenty square leagues of land referred to in the decree of 1822, "which he desired in Texas, shall be given to his administrator and heirs, in the territories of New Mexico or Upper California, or Lower California, if it cannot be done in Texas, in such manner as the government may agree upon with those interested."

Compiled Laws, volume 3, page 41, April 18, 1835; Reynolds, page 192.

If the government was the owner of these lands, why should there have been any doubt about its ability to give lands in Texas, in accordance with the desire of the emperor? Was it not because the gov-

ernment understood that it would have to arrange with the state authorities of Texas before this large tract of land could be given to the heirs of the late emperor, and fearful of its ability to make a satisfactory arrangement with the state government, provision was made for the selection of these lands in the *territories* of the republic, where the nation had a clear right to grant them?

It will not do to answer these suggestions by saying that during Santa Anna's reign, and in 1853, it was decreed by him that this obligation was to be in part satisfied by taking lands from either Lower California or Sonora, for it will be admitted by appellee that Santa Anna asserted the right to take the property of *all* persons, whenever it best suited "His Most Serene Highness" to do so.

On the 30th day of August, 1849, we find in the compiled laws of Mexico an executive order or law, addressed to the governor of Sonora, again recognizing the right of the states to the public lands, as follows:

"The supreme government is advised that upon account of the disturbances existing in Upper California, especially in the gold fields, the odium thereof being cast upon the Mexicans, Spaniards and Chilians, which interferes with their residing there and forcing them to remove. In addition to other advices which indicate that in that

country there are no social guarantees, this has attracted the attention, doubtless, of his excellency, and in consequence, he orders me to say to your excellency, that he expects you to do what is possible to bring us this population, with the idea that these emigrants will be given public lands upon credit, and if this state will not grant the same gratuitously to the emigrants who cannot pay, the same will be provided them notwithstanding, for the general government obligates itself to indemnify the state therefor, in the manner which the general congress may determine."

Compiled Laws, volume 5, page 603, No. 3321. Reynolds, page 294.

Upon the question under discussion, and the division of the rights and powers between the government of Mexico and the states forming the national government, the case of Chambers vs. Fisk, 22 Texas, 504, *supra*, because of the manifest familiarity of the court with the matters therein considered, as well as the inherent strength of the opinion, is entitled to the highest respect. After referring to the provisions of the constitutive act, and of the constitution, most of which are herein given, the court, at page 522, say:

"Under the rights thus accorded, the congress of Coahuila and Texas established a provisional state government at Saltillo, August 15, 1824, and afterwards adopted a constitution of the

state of Coahuila and Texas, on the 11th of March, 1827, in which, after asserting the freedom and independence of the state, it is declared, that: (Article 4) In all subjects relating to the Mexican confederacy, the state delegates its powers and rights to the general congress of the same; but in all that belongs to the internal government and administration of said state, it retains its liberty, independence and sovereignty."

"The instrument proceeds to institute and organize the respective departments of a representative republican state government; asserts that 'all kinds of vacant lands within its limits, and all intestate property without legal successor, shall belong to the state,' and declares that its 'congress shall have power to enact, interpret, amend or repeal the laws relative to the administration and internal government of the state, in all its branches.'"

And then, after directing attention to the differences between the constitution of the United States of America and that of the Mexican states particularly, referring to the power and practice of the general congress of Mexico to annul unconstitutional measures, that power not belonging to the courts, the court, at page 527, say:

"These views, it is believed, will enable us the better to consider the Mexican system of government, as to its powers, duties and obligations in all its departments, in a point of view from which

the Mexicans who framed it, and acted under it, did regard it. And that is important; for *that* is the actual government, which they (and not others) understood themselves to be founding and carrying into operation."

"The fact, then, that a constitutional provision, or a law or class of laws, was subjected to these ordeals of supervision and abrogation, and was suffered to remain in force long enough for rights to be acquired under it, is a strong and potent circumstance in favor of its validity, as a part of their system of government, as they understood it."

"The general government, in recognizing the state of Coahuila and Texas as organized under its constitution, conceded the right of internal administration, as effectually as though the states had been free and independent sovereignties, and had, by joint concessions and agreements, formed the federal government."

"The constitution of that state, after asserting its independent sovereignty, except as to the powers delegated to the general government, assumes to claim that 'all kinds of vacant property within its limits, and all intestate property without a legal successor, shall belong to the state' (article 15); and that the congress of the state shall have power to 'enact what is proper for the administration, preservation and alienation of the property of the state' (article 97). Here is an open, express claim of right to the vacant domain in the state, with full power of



disposition. These provisions of the constitution of the state are not annulled or controverted in any way by the general government."

The reasoning of the Supreme Court of Texas, as before indicated, applies as well to the state of Sonora.

We were told at the bar in oral argument, at the trial in the court below, that the declaration of ownership of the public lands by the state of Coahuila and Texas could not be taken as a precedent, for the reason that that state was always in rebellion against the national government, and that no doubt the declaration concerning vacant lands, found in the legislation and constitution of the state of Sonora and Sinaloa, was taken from the same declaration in the laws and constitution of the state of Coahuila and Texas. It will, however, be noted that the constitution of Sonora and Sinaloa was adopted by that state November 2, 1825, and that the constitution of the state of Coahuila and Texas was not adopted until the 11th of March, 1827, nearly a year and a half after the adopting and promulgation of the constitution of the state of Sonora and Sinaloa, and nearly two years after the enactment of the law of May 20, 1825, by the congress of Sonora and Sinaloa, providing for the sale of vacant lands in the state. And is it not then fair to presume, as did the Supreme Court of the state of Texas, that if it had been considered,

on the part of the federal government, that these acts of the state of Sonora were an unconstitutional encroachment upon the prerogatives of the federal government, the federal congress would, as it had the right to do in such case had the state of Sonora exceeded her powers, have promptly interfered and annulled legislation and grants of lands, in pursuance thereto? In so important a matter as the sale of public lands, the exercise of a power unwarranted by the constitution would have been promptly suppressed by the general congress.

On August 4, 1824, and between the dates of the constitutive act and the adoption of the constitution, the general congress of Mexico passed a decree specifying the sources of federal revenue. The 11th article of this decree declares "that the rents (revenues) that are not included in the preceding articles of this decree belong to the states." As nothing is said in the former articles of the decree concerning the revenue to be derived from the sale of the public lands, it must have intended to declare that such revenue belonged to the states. This construction was claimed for it by the state of Sonora, and was never disputed by the general congress.

On November 25, 1853, Santa Anna promulgated a decree to the effect that the public lands were the exclusive property of the nation—never could have

been alienated by the states of the republic; and declaring that all sales of the public lands, which had been made without express mandate and sanction of the general government, were annulled, which was followed on July 7, 1854, by another decree from the same authority, declaring that titles issued after the year 1821 should be submitted to the review of the supreme government, and without it they could have no value.

Hall's Mexican Law, 166-7.

Compiled Laws, volume 6, page 776, No. 4118.

Id., volume 7, page 222, No. 4276.

Of these decrees we will, in discussing another branch of this case, have more to say later on.

On December 3, 1855, President Alvarez annulled both of these decrees by his decree of that day, articles I, II. and III. of which are as follows:

"Article 1. The decrees of November 25, 1853, and July 7, 1854, which submitted to the revision and approval of the supreme government the grants or alienations of public lands made by the local governments of the states or departments and territories of the republic from September, 1821, to that date, are repealed in all their parts.

"2. Consequently, all the titles issued during that period by the superior authorities of the

states or territories under the federal system, by virtue of their lawful faculties, or by those of the departments or territories, under the central system, with express authorization or consent of the supreme government for the acquisition of said lands, all in conformity with the existing laws for the grant or alienation respectively, shall for all time be good and valid, as well as those of any other property lawfully acquired, and in no case can they be subjected to new revision or ratification on the part of the government.

"3. The alienation of public lands that have been made by the authorities of the state or departments and territories without the requisites referred to in the preceding article, and in contravention of the provisions of article IV. of the law enacted by the general congress, on the 18th of August, 1824, are void and of no value, and the holders of that class of lands are subject to the penalties established by existing laws in the republic for those who acquire property in an unlawful and fraudulent manner, unless they promptly obtain the approval of the supreme government, to which they shall apply therefor through the department of public works."

Compiled Laws, volume 5, page 627, No. 4588.

On October 16, 1856, the congress of the nation passed a decree as follows:

"Article 1. The decrees of November 25, 1853, and July 7, 1854, are void.

"2. Antonio Lopez de Santa Anna and the ministers who took part in their approval and promulgation are responsible, with their property, for the damages they have caused.

"3. The governors of the departments are likewise responsible, with their property, for the damage they have caused in the execution of the provision on public lands, having exceeded the limits laid down in the several laws."

Compiled Laws, volume 8, page 269, No. 4811.

Hall, 169.

Had the federal government not been of the opinion that the alienations against which the decrees of Santa Anna were directed were valid, the law of October 16, 1856, would certainly not have been passed. These decrees are not *repealed*—they are declared *null*.

The Mexican nation having conceded these titles, by this act of 1856, to be valid under the laws of Mexico, the government of the United States certainly should not question their validity.

This law of October 16, 1856, is a direct and positive statement on the part of the supreme federal authorities that the states had been, from the year

1821, the owners of their respective vacant lands, and in the disposal of the same, by sale or otherwise, had lawfully exercised the power of sovereign states.

In 1892, one of the counsel for appellee (Mr. Hall) addressed a letter to the Hon. Ignacio L. Vallatra, who was for many years chief justice of the Supreme Court of Mexico, and for a long time after he resigned that position, the chief legal advisor of the government, as well as a law writer of great learning and ability, touching the power of the several states of Mexico to dispose of the public lands, and on the 3d of May, 1892, Judge Vallatra replied to the letter as follows:

“You are right in believing that while the constitution of 1824 governed the country, the states legally disposed of the vacant lands; and although the administration of General Santa Anna, centralizing the power, nullified the concessions of land by the states, the constituent congress annulled the laws of Santa Anna, by its decree of the 16th of October, 1856, which *considered valid those concessions*. The constitution, which governs to-day the republic, of the 5th of February, 1857, gives the federal power the right to dictate rules to which the alienation of the vacant lands ought to be subject; and the law in force on the matter of July 22, 1863, gives the state in which the vacant land is situated a third part of the price; but neither it nor the

constitution says expressly whether the property in such land is of the federation or of the state. Upon this point exists divers opinions, but in fact, the federal power is the one that disposes of those lands."

In 1887, the Mexican secretary of public works issued an "exposition of the colonization of the republic," in reference to the act of Don Francisco Madira, who, while acting as an officer of the state of Coahuila, founded the town called "Libertad," in about the year 1836. The secretary says: "It is to be observed that in that time the *states had the power to make concessions of lands, issue titles, and dictate the proper conditions on the subject of colonization.*"

We have also in this case the testimony of two Mexican lawyers of great eminence and ability, both of whom have held the highest judicial positions in their own country, and we believe that an examination of their testimony will convince the court that it is entitled to the highest consideration.

Mr. Castaneda testified in part as follows:

"I have held judicial positions—Supreme Court justice of the nation, judge of the first instance in the criminal branch of Durango and Hermosilla, president of the Supreme Court, justice of Flascata, fourth judge of the criminal branch in the capital of the republic, prosecuting attorney for the Supreme Court of Mexico, and

president of one of the halls of appeal of the same tribunal, and the president of the Supreme court and justice of the state of *Sonora*. The state of *Sonora* had ample legal power and authority to dispose of its public lands in the manner provided by its own laws."

Mr. Castaneda then gives his reasons for the statement above made, and cites the constitution and the laws authorizing such action on the part of the state.

He concludes his testimony in answering a question by one of the justices of the court below as follows:

"Q. Had the state the authority to absolutely alienate its lands without the consent of the federal government? A. It had."

Record, pages 111, 112, 113, 114, and 115.

Mr. Robinson testified that he had been a member of congress, judge of the first instance, judge of the Supreme Court of the state of *Sonora*, and federal district judge. He gives a detailed history of the manner of making grants, and says there is no doubt of the right of the state to make the grant in question.

Record, pages 95 to 106.

We earnestly invite the attention of the court to the testimony of these two judges, and it would seem that great weight should be given to the testimony



of these state officials and lawyers as to the construction placed upon the laws of their state and the manner in which such laws were executed.

In seeking for information and sources of authority in foreign countries where there are no reported decisions, Chief Justice Taney, in speaking for this court, said:

“It is proper to remark that the laws of these territories (Mexican) under which titles were claimed, were never treated by the court as foreign laws, to be decided as a question of fact. It was always held that the court was bound judicially to notice them as much so as the laws of the state of the union. In doing this, however, it was undoubtedly often necessary to inquire into official customs and forms and usages. They constitute what may be called the common or unwritten law of every civilized country. And when there are no published reports of judicial decisions which show the received construction of the statute, and the powers exercised under it by the tribunals or officers of the government, it is often necessary to seek information from other authentic sources—such as the records of official acts—and the practice of the different tribunals and public authorities, and it may sometimes be necessary to seek information from individuals whose official position or pursuits have

given them opportunities of acquiring knowledge."

Fremont vs. United States, 17 Howard, 541.

"There is another source of law in all governments—usage, custom—which is always presumed to have been adopted with the consent of those who may be affected by it. In England and in the states of this Union which have no written constitution it is the supreme law, always deemed to have had its origin in an act of a state legislature of competent power to make it valid and binding, or an act of parliament, which, representing all the inhabitants of the kingdom, acts with the consent of all, exercises the power of all, and its acts become binding by the authority of all. 2 Co. Inst., 58; Wills, 116. So it is considered in the states and by this court. 3 Dall., 400; 2 Pet., 656, 667.

"A general custom is a general law and forms the law of a contract on the subject matter. Though at variance with its terms, it enters into and controls its stipulations as an act of parliament or state legislature. \* \* \* The court not only may, but are bound to notice and respect general customs and usages as the law of the land, equally with the written law; and, when clearly proved, they will control the general law. This necessarily follows from its presumed origin: an act of parliament or a legisla-

tive act. Such would be our duty under the second section of the act of 1824, though its usages and customs were not expressly named as a part of the laws or ordinances of Spain.

\* \* \* We cannot impute to congress the intention to not only authorize this court, but require it to take jurisdiction of such a case, and to hear and determine such a claim according to the principles of justice, by such a solemn mockery of it as would be evinced by excluding from our consideration usages and customs which are the law of every government, for no other reason than that, in referring to the laws and ordinances in the second section, congress had not enumerated all the kinds of laws and ordinances by which we should decide whether the claim would be valid if the province had remained under the dominion of Spain. We might as well exclude a royal order because it was not called a law. We should act on the same principle if the words of the second section were less explicit, and according to the rule established in *Henderson vs. Poindexter*. See 12 Wheat., 530, 540."

U. S. vs. Arredondo, 6 Pet., 414-15.

"In Texas the practice has long prevailed of receiving the evidence of intelligent Mexicans, not lawyers, as to the laws of Spain and Mexico in litigation pertaining to lands, and such evidence is pronounced by the courts of that state 'to have been valuable in giving information as

to the construction given to the laws of Spain and Mexico by the officers who executed them.'"

Rogers, Expert Testimony, 217.

State vs. Cueller, 47 Texas, 304.

I have no doubt that there has been a great deal of confusion on the subject of the sale of the lands of Sonora, by reason of not giving careful attention to the difference between the colonization law of August 18, 1824, and the law of August 4, 1824, referred to in the title papers in this case. The two laws are entirely different. There is no authority for the statement of counsel that the latter law "was purely and simply a revenue law and was never intended to reach the public lands."

Brief, page 65.

Nor do the facts warrant the statement that the states did not, until a late date, maintain that article XI. of this law gave them a right to dispose of their public lands.

Brief, page 78.

On the contrary, Sonora asserted its right from the beginning, and during the first session of its congress called attention of the national congress to its interpretation of the law, as is clearly shown

by the following communication to the governor of the state of Sonora, from the secretary of its congress:

OFFICE OF THE  
SECRETARY OF THE STATE CONGRESS.

Most Excellent Sir—Based upon the law concerning the classification of federal revenues, and upon subsequent data, the honorable congress, in article XLVII., of the decree No. 23, declares that the right to issue confirmations of lands is one of the revenues of the state. The regulation of that branch was a consequence of this declaration. While this regulation was under advisement, the observations arrived which the commissary general makes in his letter of the 26th of the past month, and which your excellency had the kindness to transmit to us, together with another letter of the 21st of the same month. They refer to those presented under the date of December 13, in which said chief officer expresses doubts as to whom the proceeds of the sale belong, and about which he consulted from that time forward, the general government. The decision for which he asks has not yet come, and the honorable congress has waited three months for it; a sufficient time for it to have arrived. This silence alone, without there being any need for other reasons, which might here be alleged, confirm the opinion and convey the conviction that the said right of confirming land titles belongs to the state, and the

harm which might result to the state in the present depletion of its treasury by keeping this branch in a state of paralysis was another motive towards the issuance of the said declaration.

Done in to-day's session of the honorable congress and so communicated to your excellency, in order that you may transmit this resolution to the aforementioned commissary general, who shall at the same time be notified that, if after the usual procedure in such cases, it should be declared that the branch of public lands did not form a part of the state revenues, the national treasury is to be reimbursed in the amounts collected by the treasury of the state.

By this order your letter of the 27th of last April is now answered.

May God have you in his keeping many years.

FUERTO.

May 9, 1825.

TOMAS ESCALANTE, Deputy Secretary.

JOSE DE JESUS ALMADA, Deputy Secretary.

(Rubricas.)

The state waited three months prior to May 9, 1825, for a decision of the national government upon the question of the state's ownership of the public lands within her borders, and then the congress of the state passed the law of May 20, 1825, providing for their sale by the state.

Thereafter, and on the 2d of November, 1825, the "political constitution of the free states of the West"—Sonora and Sinaloa—was promulgated. Section 16 entitled "Of the Public Landed Property of the State." Article CCXCIII. provided: "The rents (revenues) that are not reserved to the federation, by their decree of classification, of the 4th of August of 1824 last passed, are those which until now have formed the elements of which the landed property of the state is composed \* \* \*."

Had the national government disapproved the construction which Sonora placed upon the law of August 4, 1824, and communicated to it some time in February, 1825, we would not find the same construction concerning the right of disposition of its public lands in the constitution of November 2, 1825, nor in the subsequent recital found in the preamble to all grants issued by the state. It is certainly fair to conclude that some time between February and November, the national government signified to the state government its approval of the state government's construction of the laws of August 4, 1824.

The communication of the congress of May 9, 1825, and other records of Sonora, which, in our opinion, will be of great assistance in determining the right of the state to its public lands, was introduced in evidence in the case of Maish and

Driscoll vs. The United States, tried before the Court of Private Land Claims and appealed to this court. It has been stipulated that these records and communications are a part of the public records of the state of Sonora, and may be used and considered in the determination of this case, the same as if they had been originally introduced in evidence herein. These records were found after weeks of diligent search among the old archives of Sonora by Mr. Rochester Ford, of Arizona, and attention is particularly directed to them.

In 1870, the Mexican government officially published the "Memoria de Hacienda y Credito Publico," a history of the treasury department of the nation, going back before the revolution of 1821. On page 62 is given a table showing the revenues prior to the revolution. One of them is from the "ventas, compras y confirmaciones de tierras," or proceeds from the sale of lands. On page 80 is given a table prepared and submitted to the general government in 1825. It is an estimate of the various revenues which the government might be expected to receive, and shows the sources from which the revenues would be derived.

The table is as follows:



“Extracto de los valores, gastos y liquido de las rentas generales correspondientes a la Federacion por los soberanos decretos numeros 70 y 81.

#### RAMOS.

Derechos de importacion y exportacion.

Idem de internacion.

Renta del tabaco, incluyendo en la columnilla de gastos la compra y fletes.

Renta de polvora.

Alcabala que paga el tabaco en los paises de su cosecha.

Renta de correos.

Renta de loteria.

Renta de salinas.

Las de los territorios de la Federacion.

Bienes nacionales; fincas rusticas y urbanas del fondo piadoso de Californias, de temporalidades y de inquisicion.

Rentas decimales en las ocho catedrales de la nacion.

Idem de la mitra de Mexico.

Idem de la dignidad de tesorero.

Contingente de los Estados.

Averia.

Casa de moneda.

Peaje.

Creditos activos; deudores a la renta de salinas, de cuyo cobro hay esperanzas.

Prestamo extranjero."

( Translation. )

"Extract from the income, expenses and liquidation of the general (revenues) rents, corresponding to the federation, by the sovereign decrees, numbers 70 and 81.

**BRANCHES.**

Importation and exportation duties.

International duties.

Rents (revenue) from tobacco, including in the column of expenses, the purchases and freight.

Rents (revenue) from powder.

Duties paid on tobacco in the countries of its cultivation.

Rents (revenue) from the mail service.

Rents (revenue) from lotteries.

Rents (revenue) from the salt works.

Rents (revenue) from the territories of the federation.

National properties; rural and urban properties of the church fund of the two Californias, of the secular revenues and of the inquisition.

Tithing rents (revenues) of the eight cathedrals of the nation.

Tithing rents (revenues) of the bishopric of Mexico.

Tithing rents (revenues) of the dignity of the treasurer.

Contingent of the state.

Aviaries.

Mint.

Bridge toll.

Active credits; debtors to the rents (revenues) of salt works, for whose collection there may be hopes.

Foreign loans.

There is not the slightest intimation here that the Mexican government claimed any revenue from public lands, "tierras." As will be seen from opinion of Judge Sluss, printed as an appendix to this argument, "bienes nacionales" and "fincas rusticas urbanas" have no reference to the public domain.

*"The appellants, on whom the burden of proof is cast, to show want of authority, have produced no evidence, either documentary or historical, that the Spanish officers who usually acted as governors of the distant provinces of California*

were restricted in their powers, and could not make grants of land.

\* \* \* \* \*

"An attempt to trace the obscure history of the various decrees, orders and regulations of the Spanish government on this subject would be tedious and unprofitable. *It is sufficient for the case* that the archives of the Mexican government show that such power has been exercised by the governors under Spain, and *continued to be so exercised under Mexico*, and that such grants, made by the Spanish officers, have been confirmed and held valid by the Mexican authorities. Sola styles himself political and military governor of California. He continued to exercise the same powers after his adhesion to the Mexican government, under the provisions of the plan of Iguala and the twelfth section of the treaty of Cordova. The grant in fee, given by Sola, was after the revolution."

United States vs. Peralta, 19 How., 343.

*a*  
An again, in the same case, page 347:

"We have frequently decided that the public acts of public officers, purporting to be exercised in an official capacity and by a public authority, are not presumed to be usurped, but that the legitimate authority had been previously given or subsequently ratified. To adopt a contrary rule would lead to infinite confusion and uncertainty of title."

We feel confident that a consideration of the foregoing will lead this court to the conclusion expressed by the Supreme Court of Texas: "That extensive authority over the public land was vested in the state; that she possessed the property in the soil, and had alone the power by direct agency, of appropriating lands to individuals; that this power was never denied by the general government during the existence of the confederacy."

Republic vs. Thorne, 3 Texas, 499, 509.

## THE GOVERNMENT UNDER THE CENTRAL SYSTEM.

It has been shown that the fee was in the states at the time of the adoption of the central constitution, which went into operation on the first day of January, 1837. It was in force in April, 1838, when the grant in question was made. The constitution of 1836 abolished the state legislatures, and the territory of the nation was by it "divided into departments, on the basis of population, locality and other contributing circumstances," which was afterwards declared by the law of December 30, 1836, to be that "The territory of Mexico is divided into as many departments as there were states," with certain modifications named therein.

The constitution of 1836 protected every person and corporation in their property rights.

The change from a state to a department was but a change of political rights, and not a change of property rights. This constitution did not destroy, nor did it purport to destroy, that invisible, intangible being, the state of Sonora; the name was changed, and the form of government to some extent, but the political entity was not annihilated, neither did the central constitution divest nor claim to divest the former states of their property rights to the vacant lands within their borders.

Subdivision 3 of the constitution of the central system of 1836, under the head of "The Formation of the Laws," article 45, reads as follows:

"The general congress cannot deprive any one of his property, directly or indirectly, whether it be an individual or ecclesiastical or secular *corporation*."

The states and departments were regarded as political and public corporations for the purpose of government and the management of public affairs.

"Neither the state *nor any other corporation* or public establishment enjoys the privileges of *restitution in integrum*."

Title 3d, Art. 46, page 16, Civil Code of Mexico.

See, also:

New Hemstead vs. Hemstead, 2 Wend.,  
135.

The People vs. Utica Ins. Co., 15 John., 358.

Indiana vs. Worman, 6 Hill., 33.

Section 5, article 118, title 6 of the judicial powers of the Supreme Court of Mexico, 1843, provides:

“To try in the same manner the judicial demands which a department may institute against another department as private individuals against a department, when they are reduced to a really contentious trial.”

This would seem to be a declaration, at least by implication, that the departments held property; otherwise, of what avail would have been a judgment against it? A judgment, without adequate means to enforce it, is but a shadow.

This court has laid down the rule for the interpretation of legislation, as to the rights of property, as follows:

“Whatever the power of a legislature may be, its acts ought never to be construed as to *subvert the rights of property*, unless its intention to do so shall be expressed in such terms as to admit of no doubt, and to show a clear design to effect the object.”

"No general terms intended for property, to which they may be fairly applicable and not particularly applied by the legislature, no silent, implied or constructed repeals ought ever to be understood as to divest a vested right."

Rutherford vs. Green, 2 Wheat., 96.

Cited and quoted in U. S. vs. Aredondo, 6 Pet., 691.

The rights of the state of Sonora to her public lands inured to the benefit of the department of the same name.

There can be no doubt that such was the understanding of both the nation and departments. March 2, 1896, this court decided the case of Ainsa, Administrator, vs. The United States, on appeal from the Court of Private Land Claims. The title to property involved in that case was obtained from the department of Sonora, in 1843.

In the preamble to the grant papers, it is stated:

"Whereas, Article 11 of the sovereign general decree No. 70, of the 4th of August, 1824, ceded to the old states the revenues which in said law the general government did not reserve to itself, one of which is, that from the lands (terrenos) in their respective districts, which, therefore, belong to them, and for the disposal of which the honorable constituent congress of the state, which was Sonora and Sinaloa united, enacted



x See also Dec 10 Jan Oct 3 1835  
" 73 " Apr 17 1837  
" 2 " Dec 3 1838-  
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law No. 30, on the 20th of May, 1825, as did also the successive legislatures other decrees concerning them, which enactments have been retained in sections 3d, 4th, 5th, 6th and 7th of chapter 9 of the organic law of the treasury, No. 26. of the 11th of July, 1834, the said revenue from lands being now one of those of this department of Sonora, which have continued and must continue, as provided in article 1, of the decree of the 17th of April, 1837, that of the same month of 1839, and of the 24th of December, 1840," etc.

\* A like recital to the above is in the title papers of all grants made by Sonora when she was a department. The officer executing these title papers was required to and did make a report of his doings to the general government. Then we have here the construction of both the nation and the department upon existing laws relating to lands after the change to the central system of government. These were the laws, and this the manner of their execution, as understood by those whose duty it was to execute them.

It would be manifestly unjust to destroy property rights by putting a narrower construction upon these laws than they received by the officers charged with their execution, and a refusal to do so has marked every decision of this court where the subject has been considered.

None of the constitutions, plans or organic bases of government for Mexico, with the exception of the

constitution of 1824, and the present constitution of February 5, 1857, mentioned public lands or in any wise referred to their disposition.

The present constitution declares that congress has the power "to fix the rules to which the occupation and alienation of public lands ought to be subject and the price of said lands." This power was then given to the federal congress by the organic law for the first time, and for the reason, of course, that it was considered that congress did not have such power prior to the time that it received it from the states, and at the date of the adoption of the constitution of 1857.

It is not improper to inquire if the public lands at the date of the adoption of the constitution of 1857 were owned by the state, how did the states acquire them? If the departments were deprived of the land the theory must have been as follows: The states, under the constitution of 1824, having possessed the lands, in 1836, by the constitution of that date, the fee was lost to the departments and became vested in the federal government. In 1847, by the new constitution, the states were reformed, and the fee became vested in them again; in 1853, under Santa Anna, the departments were again established, and the fee became again vested in the federal government; in 1856, under Comonfort, the states were re-

established, and the fee became again vested in the states; and finally, by the constitution of February 5, 1857, the power became vested in the federal congress to dispose of the public lands.

It can hardly be seriously contended that the fee in the public lands had such a transitory existence. It would seem clear that no other theory can be advanced, except that, in 1824, the states were the owners of the public lands, and that the states and departments respectively held these lands until the constitution of 1857 was established, by which the states granted to congress the power to dispose of them. Let us suppose that while the states had an existence, they issued bonds in payment of claims against them; all property of either states or departments would have been fastened with a trust for the payment of such bonds, and it cannot be said that the holders of these obligations would have been deprived of their security by reason of a change in the political form of government of the respective states. The federal government would have had no legal or equitable right to take the security from the holders of bonds, or to deprive the states of the property which they held, and which they might dispose of in payment of their indebtedness.

The laws of the states remained in force in the departments after the change to the central system of

government. The preamble to all grants made during the departmental period clearly shows that this was the understanding of the national officers charged with the transaction of public business and the execution of the laws in the departments. After reciting the authority of the old states for the sale of the public lands, these statements in grant papers during the department period conclude as follows:

"The said revenue from lands being now one of those of this department of Sonora, which have continued and must continue as provided in article I. of the decree of the 17th of April, 1837, that of the same month, 1839, and of the 24th of December, 1840, etc."

Statement Preamble Grant Ainsa, *supra*.

On the 25th of May, 1838, the minister of the interior of the Mexican nation issued a circular relative to the laws of the states being in force, which circular was approved by the president, and is found in 3d volume, Comp. Laws of Mexico, page 557. This circular is indexed (page 806 of volume 3) as "*Leyes de las Estados. Estan vigentes las que no estan expresamente derogadas?*" the translation of which is "Laws of the States. There are in force those which are not in direct terms annulled." The full text of the circular is as follows:

"It must be principally noted that there are in force all such laws as are not openly inconsistent with the prevailing system, and unless they are found to have been expressly repealed by any other subsequent disposition, this rule also holding good in regard to those laws which were decreed (passed) in the very remote epochs, and under the different forms of government which the nation has had; and that, therefore, the courts and other authorities daily transact their various duties under the existence of the laws of the cortes of Spain, of the laws of Partidas and Compilation, as long as this disposition is not repugnant, more or less, to the form of government in which they were sanctioned.

"This principle being established, there follow two natural consequences; the first is, that there ought to be considered as in force the laws of the old states, whenever these contain the requisites mentioned above, unless they are repugnant to the form of government under which they had their origin, or unless the supreme government has enacted any other, since their requirements cannot be superior (paramount) to the laws.

"The other consequence is, that if the orders of the government were the result of some of its constitutional attributes, or of some other subsequent law that authorized such or another act, then the laws of the states ought not to be considered as in force, not because they are repugnant to the requirements of the government, but because the law authorizes it to decree this or

the other decree contrary to it, by the same right that any other decree is abolished by former legislation.

"From the foregoing it is the opinion of the commission that the advice of the government can be obtained, unless the council, with better judgment, resolves differently.

"Be pleased, your excellency, to advise his excellency and receive the documents which were transmitted.

"And this being approved by the president, he has seen fit to order it to be communicated to the governors of the departments, so that they may take notice of this decision for the general good."

#### **SONORA'S CLAIM TO STATEHOOD AFTER THE CONSTITUTION OF 1836.**

It will be noted that when Rodriguez bought the land in question, Sonora claimed to be acting as a free, independent and sovereign state under the constitution of 1824. Its local history from January 1, 1837, to 1841 being as follows:

After the abolition of the state legislatures, and the division of the Mexican territory into departments, as hereinbefore stated, Sonora acquiesced in the action of the federal government, and became a department, and transacted its business as such for nearly a year, when General Urrea, who had been act-

ing governor of the department under the central system, "proclaimed against it," reassembled the congress of the state, which met in December, 1837, and declared that Sonora should thereafter transact business as a free, sovereign and independent state under the constitution of 1824, and without regard to the constitution of 1836. This action of General Urrea, and of the congress of the state, was peacefully accomplished, and Sonora continued to act as a state, under the constitution of 1824, until about 1841, when she again conformed to the central system and became a department.

Testimony of Mr. Robinson, R., page 105.

This action of Sonora in protesting against the central system was not entirely unlike that of many of the former states of the nation. We learn from a history of those times that on the 8th of October, 1841, Jalisco, Guanajuato, Zacatecas, San Luis Potosi and Queretaro sent representatives to the city of Queretaro to protest against the plan of Tacubaya, under Santa Anna, and these representatives presented themselves as from their "states," and not *departments*.

It is said that this action of Sonora, in setting up a state government under the constitution of 1824, and refusing to act under the constitution of 1836, was revolutionary in its nature. This is true, but it does

not by any means follow that a title granted in Sonora, in 1838, is not valid. It is to be remembered that Sonora did not secede from the nation; she only claimed the right to exercise her political functions under the national constitution of 1824; the general government itself looked upon her as being a part of that government, and for a time permitted her to exercise the powers of statehood, choosing rather to bring her into harmony with the central system by judicious diplomacy than by force of arms. This policy was successful, and about 1840 she submitted to be governed in conformity to the departmental plan.

The Mexican nation has never questioned the validity of the transactions of public business by the public officials of Sonora during the period from 1837 to 1840, when they claimed to be the officers of the state and not of the department, and conducted the public business in the name of the state. Neither the general government nor Sonora herself ever repudiated the transactions of that period.

It is in evidence by a high public officer of Sonora, and is also shown by its archives, that more than twenty grants of land were made by the treasury department during the year 1838, and that the validity



of these grants has never been questioned, and they are recognized as legal titles to-day.

Testimony of Mr. Rochin, Record, pages 85-86.

And when it is considered how zealously the nation looked after matters respecting the public revenue, is it not fair to presume that had the national government considered that the state officers were exceeding their powers in making these grants, that we might find some law or decree disproving and annulling their acts?

In 1838, had some person deeded his land to the state of Sonora, the deed would have been good and passed title; and if that be true, the converse would be true, that a deed or grant made by Sonora to one of its citizens was valid.

It cannot affect the validity of the grant by being made in the name of the state; a political and public corporation, known as Sonora, conveyed this title and made a report to the federal government, and this report was accepted and acquiesced in, and not repudiated. (Record, pages 21-22.) As herein stated, long acquiescence is approval.

Sonora at least claimed to be a sovereign and independent state at the time of the sale of this land, and its claims were known to the federal government.

She was conducting public business and exercising all the prerogatives of statehood during this period, and was at least a state *de facto*, and as such could grant title to public lands in her possession, and these grants or sales would be good against either the nation or department.

Says Mr. Justice Baldwin, in *The Lessee of Pollard's Heirs vs. Kibbe*:

"It is somewhat remarkable that there is no one opinion of this court, or any of its members, which even questions any one principle of the law of nations, as laid down in the cases of *Harcourt vs. Gaillard*, *Henderson vs. Poindexter*, *Insurance Company vs. Canter*, *The United States vs. Soulard*, *Arredondo*, *Perchman*, *Delassus*, *Mitchell*; *Strother vs. Lucas*, and *Rhode Island vs. Massachusetts*, in the latter of which these principles are reiterated. 'There are two principles of the law of nations which would protect them (the inhabitants of a disputed territory) in their property: First, that grants by a government *de facto*, of parts of a disputed territory in its possession, are valid against the state which had the right; second, that when a territory is acquired by treaty, cession, or even conquest, the rights of the inhabitants to property are respected and sacred.'"

12 Peters, 748, 749.

*Pollard's Heirs vs. Kibbe*, 14th Peters, 410.

See also,

Texas vs. White, 7 Wall., at pages 732,  
733.

Let it be granted, then, that Sonora, notwithstanding her claim that she was a state, was only a department when the Algodones grant was made—she must have been one or the other—as a department she had the right and power to grant the vacant lands; such grant vested title in the grantee, and if it be claimed that the title thus passed was subject to defeasance by the disapproval of the national government, until such disapproval was formally signified, the estate remained in the grantee.

We will hereafter discuss the question of the approval of this grant by the Mexican government.

We conclude this branch of the case by saying that the Mexican nation having acquiesced in the powers of statehood by Sonora during the period in question, dealing with her as in the just use of the powers asserted and assumed, never treating her as one in a state of insurrection or rebellion, the law of nations will not permit the United States to take higher or different ground.

**APPELLEE ACQUIRED WHATEVER TITLE  
THE NATION POSSESSED.**

The title paper discloses all of the proceedings relating to the sale, and in the granting clause it says:

“Wherefore, in the exercise of the faculties conceded to me by the laws, decrees and regulations, and the *superior existing orders* in relation to lands, by these presents and in the name of the free, independent and sovereign state of Sonora, as well as that of the august *Mexican nation*, I concede and confer upon, in due form of law, \* \* \* the five square leagues, a little more or less, which were registered and which were sold to him at public auction by the junta de almonedas (board of sale) on the tenth of the present month. \* \* Wherefore, I give and adjudicate to \* \* etc.”

This recital that the land was sold by the state and the “*Mexican nation*” is autopisty, and in the absence of positive proof should of itself conclude the United States from contending that the appellee did not have title from the national government. Where there is no clear showing to the contrary, the court will presume that the statement of the granting officer in the title paper is true. In other words, the presumption of law is that the officer acted

with authority; that his acts were legal, and that his statements are true.

United States vs. Peralta, 19 How., *supra*.

In addition to stating that the land was sold in the name of the *Mexican nation*, the granting officer says that it was sold to the grantor of the appellee by the *junta de almonedas* (board of sale). This board of sale was a board of national creation.

"It was an official body expressly created by the Mexican national government, and invested with absolute power to make sales of public lands within that department" (Sonora).

Opinion of the court below.

Section 73 of the national decree of April 17, 1837, as follows:

"All the purchases and sales that are offered on account of the treasury and exceed five hundred dollars, shall be made necessarily by the board of sales, which in the capital of each department shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the attorney general of the treasury and the auditor of the treasury, who shall act as secretary. Its minutes shall be spread on a book, which shall be kept for the purpose, and shall be signed by all the members of the board, and a copy thereof shall be transmitted

to the superior chief of the treasury for such purposes as may be necessary, and to enable him to make a report to the supreme government."

Compiled Laws, volume 3, page 363, No. 1855.

Milla, who was auditor, and acting under the law as treasurer; Carillo, the promoter fiscal (attorney general), and Mendoza, the first alcalde, were the board who made this sale, and made it after all the proceedings had been referred to the attorney general, and he had declared the entire transaction regular and in due form of law.

Record, pages 16-17.

"A grant or concession made by that officer, who is by law authorized to make it, carries with it *prima facie* evidence that it is within his power. No excess of them, or departure from them, is to be presumed. He violates his duty by such excess, and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions must show it."

Chief Justice Marshall in U. S. vs. Delasus, 9 Pet., 117.

"Where the act of an officer to pass the title to land according to Spanish law is done contrary to the written order of the king, produced at the

trial without any explanation, it will be presumed that the power has not been exceeded, and that it was done according to some order known to the king and his officers, though not to the subjects, and courts ought to require very full proof that he had transcended his powers before they so determine it."

*Strother vs. Lucas*, 12 Pet., 410.

And, again, in the same case, it is said:

"In favor of long possession and ancient appropriation, everything which was done shall be presumed to have been rightfully done, and though it does not appear to have been done, the law will presume that whatever was to be done had been done."

If force is to be given to the law of October 3, 1835, which abolishes the state legislatures and destroyed the autonomy of the states, and which is "a sweeping decree of a congress subservient to the will of a dictator," passed during the existence of the national government under the constitution of 1824, then section 10 of that law, as follows:

"In everything relating to the department of the treasury, the government and the respective officers shall proceed in accordance with the laws, regulations and orders of each state in so far as may be compatible with the new organization of said revenues, until the general congress adopts suitable measures for the future."

Compiled Laws, volume 3, page 75, No. 1626, expressly continues the state officers, and directs them to proceed in accordance with state laws in all things relating to the department of the treasury.

The inquiry is naturally suggested, that if the states or departments owned the land, as herein contended, why did this board of national creation, exercising national authority, participate with the state officials in the disposal of these lands? To our minds, the history of the times, the unsettled and uncertain condition of the political affairs of the nation and the states, the doubt that necessarily followed this uncertainty, suggests the answer. It will be remembered that immediately upon the adoption of the constitution of 1836, Sonora for a time acquiesced and acted as a department of the government. During this time these national officers transacted its business, and for the purpose of removing all doubts concerning title they were about to pass, they took the precaution to have the sale in this case made by both the officers of the national and state governments; nor can we better answer the suggestion here made than to quote from the opinion of the court below upon this subject, as follows:

“When we consider the particular circumstances by which they were confronted, it is not surprising that they proceeded as they did in making the sale in question. The change which



had taken place in the relations between the state and the nation, by a change to the central system, had been but of short duration. The act of the Mexican government, creating this board of sales, and empowering it to sell lands, had taken effect but a short time previous. There is no act of the supreme government affirmatively and clearly annulling the prior legislation of the state. The officers of the state, after the change, were continued in the same capacity as officers of the nation in the department. They were situated many hundred miles, across mountain ranges, from the seat of government, with, to us, inconceivably slow means of communication with it. The fact that even now sincere men sincerely differ as to the legal method of making that sale affords ground for supposition that these officials may have been perplexed with uncertainty as to the legal course to pursue, and concluded, as we lawyers say, 'out of abundance of caution' to seize both horns of the dilemma, and make the sale on behalf of both the nation and the state, and observe the requirements of the laws of both in making it. There was nothing illegal or reprehensible in such a course."

This board was authorized to make the sale on behalf of the nation, and it does not matter in what manner they recited the source of their authority; the *fact* that they *had* authority to pass title to the land is the important consideration.

In the case of the United States vs. Clark, 8 Peters, 436, cited by the court below, Lieutenant Governor Coppinger recited that he made the grant under authority of a certain royal order, of 1790, which order this court said did not authorize him to make the grant; it, however, appeared that under other regulations he was authorized to make grants, and the court observed:

"We can not think that the recital of a fact entirely immaterial, on which the grant does not profess to be founded, can vitiate an instrument reciting other considerations on which it does profess to be founded, if the matter as recited be sufficient to authorize it. Without attempting to assign motives for the recital of that order, we are of opinion that in this case the recital is quite immaterial, and does not affect the instrument. The real inquiry is, whether Governor Coppinger had the power to make it."

In Chouteau vs. United States, 9 Peters, 137, it appeared that a grant was made by the lieutenant governor of the province. The lieutenant governors had no authority to make grants. The court, however, was satisfied that the lieutenant governor was also *ex officio* a sub-delegate, and that sub-delegates had authority to make grants. He did not know that he was a sub-delegate, and intended to make the grant as lieutenant governor. The grant professed to be

founded on his authority as lieutenant governor, which did not exist. The court there held that, inasmuch as Delassus had authority to make the grant, and did in fact make it, that the mis-recital of the source of his authority was unimportant, and the grant should be confirmed. In this case the supreme government was advised of the state's action in selling this land, and recognized, acquiesced and approved the same.

We are not left to conjecture, or to the legal presumption which follows these proceedings, to establish, that this title was approved by the supreme government of Mexico. The record discloses the proof of this fact.

On June 6, 1847, a certified copy of the title papers issued to Rodriguez, were, at his request, submitted by the general commissary of the department of Sonora to the minister of state of the land department of the republic of Mexico "to the end that the same may be presented to his excellency, the president of the republic."

Record, pages 21, 22.

This letter transmitting the title papers to the national officers, says the land was sold by the "junta de almonedas."

Record, page 22.

The fact that the sale was made by this board clearly appears from the title papers themselves. The junta de almoneda was a board of national creation, authorized to sell lands after the adoption of the constitution of 1836.

Sonora had submitted to the central system and was a department in 1847.

Judge Robinson says that the general government approved or disapproved sales of public lands during this period, and this was no doubt the reason why Mr. Rodriguez has his title sent to the city of Mexico, as herinbefore stated. That the national government acted favorably on this sale is shown by the following:

On the 8th day of June, 1857, Jose de Aguilar, governor of the state, certifies that the title was legally issued, and was approved by the Mexican government.

Record, page 26.

One of the records of the treasurer general's office, of Sonora, introduced in evidence by the appellee, is a certificate of Manuel Diaz, a former treasurer general of the state, and two citizens thereof, who had been appointed by the governor to examine and report upon the title to lands, which declares that:

"For the purpose of giving compliance to the foregoing disposition or order of the governor of the state, proceeded to examine, one by one, the signatures of which are contained in the expedienti that forms the title to the lands situated. \* \* \* That in the year 1838 was adjudicated to Don Fernando Rodriguez, and in that of 1847 was approved by the supreme government of the nation."

Record, page 87.

An examination of the title paper, the correspondence of different officials, and the certificates made by them introduced in evidence, make it certain that this title received the approval of the supreme government. That this evidence is competent to establish the fact of approval, the attention of the court is respectfully directed to the first case of Chouteau's Heirs vs. United States, *supra*, where like certificates and letters to those here presented for consideration were received for the purpose of determining the authority of the officer making the grant.

If the proof is not sufficient to establish the fact of approval, from it, at least, approval will be presumed.

If approval was necessary, it was not the duty of the grantee to transmit his title to the supreme government for its action. This was the duty of the

officers of the state or department, and yet in this case the grantee did in fact see to it that the papers were transmitted.

While California was a department, the governor was the granting officer; after he acted, the grant was sent to the department assembly for its approval; if the assembly disapproved, it was sent to the supreme government; if disapproved by the government, the estate was defeated. The Supreme Court of the United States has uniformly held that the estate vested upon the execution of the grant by the governor, and that, as it was the duty of the governor to procure the approval of the assembly or the supreme government, as the case might be, that the court would, in the absence of any showing to the contrary, presume that the grant had been approved.

Hornsby vs. United States, 10 Wall., 224.

Citing:

United States vs. Reading, 18 How., 4.

United States vs. Vaca, 18 How., 556.

United States vs. Larkins, 18 How., 558.

United States vs. Cervantes, 18 How., 553.

United States vs. Johnson, 1 Wall., 329.

See, also:

Wilcox vs. Chambers, *infra*.

In the Cervantes case, the archives showed that the grant had been presented to the departmental assembly for confirmation; that the committee reported in favor of the grant, and that it had been returned to the committee for its information.

"This concludes the *expedienti* as certified from the archives. It does not appear whether any further action was taken on the subject by the assembly, nor do the books exist among the archives from which any further facts can be ascertained."

The first objection to the validity of the grant was that it was not approved by the departmental assembly. To this the court answer:

"The first objection, if true in fact, has been disposed of by this court in the case of *United States vs. Reading*, decided this term. Besides, so far as the archives show any action of the assembly on this grant, it is an approval of it; and there is no evidence that it was rejected or annulled, or any further report made on it, the grantee should have the benefit of the presumption of a decision in his favor."

In the case of the *United States vs. Alviso*, 23 How., 318, there was no real grant, but permission was given to occupy the land, and some proceedings were had. The court below in that case confirmed the title of the petitioner. On appeal, this court said:

"Where proceedings for a grant of land in California were commenced by a Mexican in 1838, and continued from time to time, and no suspicion of the truth of the claim exists, *this court will not disturb the decree in his favor made by the court below.*"

As to the acquiescence of the Mexican government after a grant had been long made, this court has said:

"A strong circumstance in favor of this conclusion is the fact that Soto's official acts of commissioner, in this case, were *never repudiated* by the government; on the contrary, his protocol was received and deposited in the public archives, where it still remains. His official acts, accepted and acquiesced in by the government, must be considered as valid, even if done by himself only as a commissioner *de facto*."

Gonzales vs. Ross, 120 U. S., 619.

It is not possible that the general government of Mexico was ignorant of this grant. For *fifteen years prior* to the treaty, it remained of record in Mexico; and more, it was forwarded to the supreme government for its action. *Long acquiescence without repudiation is an approval.*

If, as contended by the United States, the fee was vested in the federal government, then, under the foregoing, this court ought not to disturb the decree



in favor of appellee, who, in the language of Mr. Justice Murray, of the court below, "bought the land in good faith, and has expended in improvements upon it a large amount of money;" or, as observed by Mr. Justice Sluss, who delivered the opinion below, "has invested his fortune in the attempt to render the land fit for cultivation."

**SANTA ANNA'S DECREES OF NOV. 25, 1853,  
AND JULY 7, 1854, ANNULING GRANTS.**

After Santa Anna's return to Mexico he assumed dictatorial and despotic powers, and we again find him at the head of a revolution, which, bowing to his will, resulted in his own declaration that he was president for life, with power to appoint his successor.

Decree of Santa Anna, December 16, 1853.

Prior to this, and on the 17th of March, 1853, under the modified "plan" of Jalisco (which plan, in effect, provided for the selection of a dictator), Santa Anna had been declared president, and on the 22d of April following, he issued his decree abolishing all legislative bodies and assuming supreme power. Under this *regime*, and after he had put the constitution behind him, the decrees of November 25, 1853, and July 7, 1854, were promulgated.

The history of current events during these periods in the United States, and the utterances of officers in high places in America, show how these <sup>2-2</sup>similar attempts at usurpation of power by military chieftains in Mexico, whose highest duty to their country seemed to be to destroy constitutional government and "proclaim" themselves supreme, were regarded in our own country.

1 Wharton Int'n Law Digest, page 303.

The Gadsden treaty was signed December 30, 1853, and thereafter duly ratified. It is contended by the United States that these decrees of Santa Anna destroyed whatever claim of right the appellee herein had to the land in controversy. To this contention we answer that neither of these decrees in any wise affect this title, and that the most that can be said for them on the part of the United States is, that they contain a declaration, made by a military usurper acting as the head of the Mexican nation, that neither the states nor the departments were ever vested with title to these lands. It is a principle too elementary to need the citation of authorities that if appellee, or his grantors, had vested rights in the land at the date, or prior to the date, of Santa Anna's decrees, those rights could not be divested by either of the decrees of any dictator or the law of any constitutional government.

The grant to Rodriguez was a *contract*, which could not be *revoked without giving the grantee a hearing*.

On the 3d of August, 1851, Mr. de la Rosa, Mexican minister accredited to the United States, notified Mr. Webster, secretary of state, that on the 22d of May, 1851, the Mexican congress had annulled a decree of General Salas of the 5th of November, 1846, making a grant with the purpose of assisting in the promotion of a railway across the isthmus of Tehauntepec, for the reason that General Salas had no authority to make the grant. Mr. Webster replied to this communication on the date of August 25, 1851, in part, as follows:

" This communication has been laid before the president of the United States, who has directed the undersigned to make the following reply:

The right of the Mexican congress to pass any laws which may conform to the constitution of that republic cannot be questioned. The undersigned will not take upon himself to say that the law communicated by Mr. de la Rosa is unconstitutional in Mexico, and presumes that if any citizens of the United States who may conceive their rights to be thereby affected should entertain that opinion, they will have no difficulty in obtaining speedy and impartial justice from the judicial tribunals of that country. This impression is confirmed by the note of Mr. de la Rosa

to the undersigned of the 7th March last, in which, on behalf of his government, he himself declares that the validity of the Garay grant is a judicial question to be decided by the Supreme Court of Mexico. In his reply to that note, the undersigned contended that the Mexican executive, in negotiating the Tehauntepec Treaty, had waived the consideration of the validity of that grant, even as a judicial question. Consequently the information communicated by Mr. de la Rosa has justly excited both surprise and regret.

The grant referred to, and the privileges conferred by the decrees of the Mexican government relating thereto, including the decree of General Salas of the 4th of November, 1846, in the judgment of the undersigned, constitute a charter. In all civilized countries, instruments of this description are considered as contracts between a government and the parties upon whom they are bestowed, conferring privileges which are not to be revoked without a reasonable cause, and without allowing the grantees a hearing in defense of their right, and not liable to be annulled at the pleasure of the executive or legislative power."

*unpublished correspondence State Dept*  
None of these decrees of Santa Anna affect this title. They were made after the Gadsdend treaty. The two will be construed together. The one of November 25 was a sweeping declaration, declaring null all grants made by the states or departments, "with-

out express mandate and sanction of the general powers in the form prescribed by law." As modified by the decree of July 7, holders of these state or department titles—not other persons, but holders of these titles—were required to submit them to the review of the supreme government. Santa Anna was hard pressed for money, and he no doubt took this, as well as many other unworthy means, to frighten the timid and blackmail those who had vested rights in property, into paying him money for the alleged purpose of perfecting their titles. The decree of July, 1854, was after the change of sovereignty over the territory in controversy. That of November 25, 1853, did not take effect in Sonora until promulgated there. By its own terms it was not promulgated at the seat of the national capital until December 2, 1853. Sonora is more than 1,000 miles distant from the city of Mexico, and it cannot be presumed that Santa Anna's decree was promulgated there until after the date of signing the treaty, December 30, 1853.

"But the laws of the Mexican states did not take effect in any part of the country until they were promulgated there. \* \* \* Besides, the commissioner was a public officer, having a public duty to perform, and, in the absence of evidence to the contrary, the presumption would be

that he acted in accordance with the law as known at the time."

Gonzales vs. Ross, 120 U. S., 605-616.

See, also, *Houston vs. Robertson*, 2 Texas, 1, 28.

In the Gonzales case, it was held that it was not probable that an act of the Mexican state congress, passed at the city of Monclova, March 26, 1834, was promulgated at Dolores, a point about 200 miles distant, prior to the 18th of the following April—twenty-three days.

We believe we have heretofore shown the grant under consideration was made with the "express mandate and sanction of the general powers in the form prescribed by law," and therefore, for this reason, it is not within the provisions of Santa Anna's decree.

All rights accruing under treaties between nations are fixed as of the date of signing, unless the nations contracting agree upon a different date. Between the high contracting parties, the ratification of treaties relates back to the time of signing.

Davis vs. The Police Jury of Concordia,  
9 How., 279.

The United States and Mexico fixed a different date than that of the signing of the treaty, when property rights should be respected, and, so far as grants of land were concerned, it was agreed that such rights should date as of the 25th of September, 1853. On that day Mr. Gadsden made the proposition of this government to purchase the territory thereafter acquired, and the United States agreed with the Mexican nation, by article 6 of the treaty, as follows: "No grants of land within the territory ceded by the first article of this treaty, bearing date subsequent to the day—25th of September—when the minister and subscriber to this treaty, on the part of the United States, proposed to the government of Mexico to terminate the question of boundary, will be considered valid or will be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located or duly recorded in the archives of Mexico."

This is a declaration that the government of the United States took the territory acquired by the Gadsden purchase subject to whatever grants had been properly made prior to September 25, and under the laws and conditions existing at and prior to that time. If the government of Mexico could not have granted any lands after September 25, it could not

have annulled grants made prior to that time. In other words, all titles would have remained in *statu quo*. Such was the evident intention of both governments. Article V. of the Gadsden treaty provided that articles VIII., IX., XVI. and XVII. of the treaty of Guadaloupe-Hidalgo were included in and made a part of the former. Article VIII. of the treaty of Hidalgo provided that Mexicans established in the ceded territory had the right to remain there or remove at any time into the republic of Mexico, preserving in said territory property which they possessed. The grantee of the land in question *possessed* the same at the time of the transfer of the territory, and he and his successors are entitled to be protected in that possession by the United States.

The terms of the treaty itself, to my mind, clearly demonstrate that this government did not claim anything by virtue of the Santa Anna decrees, otherwise they would have been made part of the treaty.

"The terms of a treaty are to be applied to the state of things then existing in the ceded territory." *Strother vs. Lucas*, 12 Pet., page 438; *United States vs. Clark*, 8 Pet., page 451. "In the treaty of cession, no exceptions were made, and this court has declared that none can thereafter be made; 8 Pet., 463. The United States must remain content with that which contented them at the transfer, when they assumed the precise



position of the king of Spain." *Strother vs. Lucas*, 12 Pet., page 446.

See, also:

Haver vs. Yaker, 9 Wall., 32.

U. S. vs. Yorba, 1 Wall., 412.

And opinion Justice, printed as appendix to this argument.

Santa Anna was not able to maintain himself under the title of "Most Serene Highness," which he modestly gave to himself, for any great length of time, and in August, 1855, he abandoned the presidency and took flight to a foreign country. On December 3, 1855, President Alvarez issued his decree of that date repealing the decrees of Santa Anna of November 25, 1853, and July 7, 1854.

Compiled Laws, volume 7, page 627.

Which decree of the acting president of the republic was followed by a law of the constituent congress, declaring *null* the decrees of Santa Anna of November 25, 1853, and July 7, 1854. The general congress does not recognize these decrees of Santa Anna as being of any force during the time they remained unimpeached. It is not said that they are *repealed*, but they are declared *null*, the congress first declaring "that \* \* \* in the use of the *faculties* which it has

to review the *acts of the executive*, decrees what follows: First, the decree of November 25, 1853, and of July 7, 1854, are null."

Hall, page 169, Compiled Laws, volume 8, page 269.

This is the declaration of a tribunal exercising appellate and final jurisdiction. The congress of Mexico alone had the right to review the acts of the executive and to pass judgment upon the laws and decrees of that nation. The decree recites the power of congress to *review the acts of the executive*.

This is a declaration that this court will respect. It can not be doubted that had the Supreme Court of Mexico the authority to declare a law of that nation void *abinitio*, this court would consider such a declaration binding upon it.

Voorhies vs. Bank, 10 Pet., 449.

Such is, in effect, the situation with reference to Santa Anna's decrees. They have been declared void by the only authority authorized to pass upon them.

It is claimed by the United States that because this government recognized Santa Anna as the head of the Mexican nation when it acquired the territory in question, treated with him as such, that we must also recognize all of his acts in relation to these pub-

lie lands as binding upon this government, and the learned justice who delivered the dissenting opinion in this case was of opinion that this contention of the United States was well founded. Section 31 of Mr. Wheaton's International Law is quoted in support of this. The section referred to reads:

"Where a foreign government and their subjects treat with the actual head of a state, or the government *de facto*, recognized by the acquiescence of the nation, for the acquisition of any portion of the public domain, or of private confiscated property, the acts of such government must on principle be considered valid by the lawful sovereign on his restoration, although they were the acts of him who was considered by the restored sovereign as an usurper."

The appellee contends that this quotation from the distinguished writer on international law, has no application to the case at bar, and that the learned justice misconceived the legal significance of the language used by Mr. Wheaton.

The act of Santa Anna was in no legal sense a *confiscation of property*. It was an act arbitrarily *vacating grants* wherein rights had become vested. Confiscation, as here used, "is the act of a sovereign against *rebellious subjects*." Confiscation recognizes *the title of the original owner*. Santa Anna did not rec-

ognize the title of any one; but, on the contrary, declared that the grantees of these lands had no title.

There are certain acts which an usurper cannot do and be sustained by the tribunals of any civilized country. The decrees of Santa Anna are of that character. He went beyond the right of an usurper. What civilized nation could uphold these decrees, *vacating grants* of citizens not in rebellion, but loyal to his administration? These persons possessed rights of property never adjudicated upon by any judicial tribunal. The great principles enunciated by the South Carolina Supreme Court, in *Bowman vs. Middleton*, in 1780, will be upheld by every honest tribunal. The court in that case set aside an act of the colonial legislature in attempting to take away the freehold of one man and vest it in another, without any compensation, or any previous attempt to determine the right, as being against *common right* and the *principles* of *Magna Charta*. The court declared the act to be *ipso facto* void, and that no length of time could give it validity. Constitutional inhibitions against such legislation are unnecessary, for the court proceeded upon the great fundamental principles which support all governments and property. A legislative act contrary to the great first principles of the social compact is invalid.

Calder vs. Bull, 3 Dall., 386.

Vattel, in speaking of the rights of a sovereign, says: .

"Every proprietor has a right to make what use he pleases of his own substance, and to dispose of it as he pleases, when the rights of a third person are not involved in the business. The sovereign, however, as the father of his people, may and ought to set bounds to a prodigal, and to prevent his running to ruin. \* \* \* *But he must take care not to extend this right of inspection so far as to lay restraint on his subjects in the administration of their affairs which would be no less injurious to the true welfare of the state than the first liberties of a citizen.*"

Vattel, Law of Nations, page 115.

"It undoubtedly must rest as a general rule, in the wisdom of the legislature to determine when public uses require the assumption of private property; but if they should take it for the purpose, not of a public nature, as if the legislature should take the property of A and give it to B, or if they *should vacate a grant of property, or of a franchise, under pretext of some public use or service, such cases would be gross abuses of their discretion, and fraudulent attacks on private rights and the law would be clearly unconstitutional and void.*"

Kent, volume 2, page 340.

And again, in volume 1, page 19, Chancellor Kent says:

"In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims; and no civilized nation that does not arrogantly set all ordinary law and justice at defiance, will venture to disregard the uniform sense of the established writers on international law."

Santa Anna was acting as the president of a republic. His acts in attempting to vacate grants were subversive of the very fundamental principles of a republic. A republic is a state in which the exercise of sovereign power is lodged in representatives elected by the people. Let us suppose that the act vacating grants had been passed by the congress of Mexico; such acts would not be sustained. They would be against every principle of law, equity and common right. The case would then have stood thus: The federal government claimed the lands, and the state of Sonora likewise claimed them. Who is to decide the question of title between the two parties? When two or more parties claim the same property, the declaration of neither party is decisive of the right of property. Such questions must be settled either by compromise, by arbitration or by establishing some tribunal authorized to determine the question. Such has always been the

views of our own government. The articles of the confederacy were not signed by all of the colonial states until the compromise was made as to the right and title of the public lands. The same just principle was acted upon by the United States within the last few years. Texas claimed land embraced within the county of Green, as appeared on the map of Texas, in the northern part of that state. The United States claimed the same as part of the territory of Oklahoma, but made no legislative declaration that the land did not belong to Texas. It passed an act authorizing the attorney general to bring suit in equity in this court, in order that the claim to the land might be judicially determined.

United States vs. Texas, 143 U. S., 621.

Attention is called to the case of the lessees of *Marlott vs. Silk & McDonald*, 11 Pet., 39, where this court said: "Both Pennsylvania and Virginia having claimed the territory of which the land in controversy is a part, as being in their limits, the dispute was finally adjusted by a compact between them, which was ratified by Virginia on the 27th of June, 1780, with certain conditions annexed, and absolutely by Pennsylvania on the 23d of September, 1780, with an acceptance of the conditions annexed by Virginia.

"The question arises under, and is to be decided by, a compact between two states, *where the decision is not to be collected from the decisions of either state*, but is one of international character."

In the case at bar we find no compact with the federal government of Mexico and the several states until the establishment of the constitution of 1857, authorizing the federal congress to dictate rules concerning the alienation of public lands. To say, then, that Santa Anna, under the circumstances of the case as president of a republic could, with one sweep of the pen, destroy vested rights to thousands of acres of lands is a proposition that will not be supported by the tribunals of any enlightened nation. We repeat, it is against law, equity, and common right.

This court held, in *Fletcher vs. Peck*, 6 Cranch., 78, that a party to a contract could not pronounce its own deed invalid, although that party be a sovereign state.

The appellee further contends that if said decrees of Santa Anna were valid, as the facts appear in this case, he cannot be deprived of the land. These decrees were not wholly self-enforcing. There remains something to be done after the decree has issued, before the grantee could be deprived of his property. Article 3 declared that certain officers were to claim and receive, in the name of the nation,



the lands comprehended in article 1, "and which are found in possession of corporations or private individuals, whatever be their prerogatives and category." The land in question was never taken possession of in the name of the nation, or otherwise, under these decrees, nor was any attempt made to take possession thereof. The grantee was in possession when the transfer of territory was made under the treaty to the United States, and he and his successors have been in such possession ever since, and are entitled under the treaty to be protected in that possession. Possession is property. The decrees, if valid, only destroy the *paper title*, which is *evidence* only of the right to the property.

#### CONDITIONS OF THE GRANT, POSSESSION, ETC.

The appellant denies in its answer that Rodriguez, the grantee of the state, ever complied with the conditions imposed by the laws of the state of Sonora and the republic of Mexico upon citizens to whom its vacant lands were disposed, and avers that the conditions attached to, and running with said grant, imposed by law, as well as by the terms of the grant itself, were never complied with, and in another part of its answer demands that the plaintiff be put to his proof, as to compliance with all

of the conditions precedent and subsequent, and as required by the act approved March 3, 1891.

The conditions annexed to the grant in this case are as follows: "That he shall settle and cultivate said land as soon as the circumstances surrounding that distant and desert portion of the state may permit him to do so, in view of the imminent risk and danger there is on account of savages; but when the said lands shall once be settled and cultivated, they shall be kept in this condition, and that they shall not be unoccupied and abandoned for any time, and if the same shall be abandoned for the space of three consecutive years, and any one else should denounce said lands, in that event, after the necessary proceedings, they shall be declared vacant," etc., and such were in effect the conditions under which Rodriguez petitioned for the purchase of the land.

The second condition annexed, to-wit: "That after the lands were once settled and cultivated they shall not be abandoned for the space of three consecutive years," is thought to be of no special importance in this controversy, for this only gives the right to a third party to denounce the lands, and by proper proceedings on the part of the government, have the same declared public land, and again sold to the highest bidder. And it certainly cannot be seriously contended on the part of the United States,

that under this condition either the state of Sonora, had the grant remained within its jurisdiction, or the government of the United States, to whom the jurisdiction was ceded, would or could have produced a forfeiture without denouncement by some third person.

It is taken for granted that the answer of the defendant, concerning the condition, is directed to the first of the conditions, to-wit: That the lands shall be cultivated as soon as circumstances will permit the grantee to do so.

There was considerable controversy at the trial of this cause as to whether this condition was precedent or subsequent, and it is important that that question should be first determined.

When a condition must be performed before the estate can commence, it is called a condition precedent; but where the effect of a condition is either to enlarge or defeat an estate already created, it is then called a condition subsequent.

4 Kent, 125.

A condition precedent is one that must take effect before the estate can vest.

2d Devlin on Deeds, section 964.

The language of this grant is:

"I give and adjudicate to the said Senor Don Fernando Rodriguez, as a legal sale for himself, his children, his heirs and successors, the said five square leagues of vacant lands, contiguous to the Gila and Colorado rivers, situated in front of the confluence of the same, as also opposite to the point El Paso De Los Algodones, of the said Colorado river, on the northern frontier of this state, under the conditions," etc.

In Arredondos case, 6 Peters, 691, the language of the grant was as follows:

"I grant to them the part which they solicit of the said tract belonging to the royal domain, in conformity to the sovereign disposition on this matter, and the precise conditions to which they obligate themselves to establish thereon two hundred families, which ought to be Spanish, with all the requisites which are provided for, and others which will be provided by this superintendency, in virtue of the said royal order, the said establishment to begin to be carried into effect in the term of three years at the farthest, without which this grant will be null and void."

At page 745, Mr. Justice Baldwin, speaking for the court, says:

"We now consider the conditions on which the grants were made. According to the rules, and the law by which we are directed to try this case, there can be no doubt that they are subsequent. The grant is in full property in fee,

an interest vested on its execution, which could only be divested by the breach or non-performance of the conditions, which were: That the grantees should establish on the land two hundred Spanish families, together with the requisites pointed out, and which shall be pointed out by the superintendency, and begin the establishment within three years from the date of the grant."

In the case of *Fremont vs. The United States*, 17 Howard, 442, the language of the grant is as follows:

"I have granted to him the aforesaid tract of land, declaring the same by these presents his property in fee, subject to the approbation of the most excellent the department assembly, and to the following conditions:

First—"He shall not sell, alienate, nor mortgage the same, nor subject it to taxes, entail, or any other incumbrance."

Second—"He may enclose it, without obstructing the crossings, the roads, or the right of way. He shall enjoy the same freely and without hindrance, destining it to such use or cultivation as it may most suit him; but he shall build a house within one year, and it shall be inhabited."

Of this grant, the court says:

"It has conditions attached to it, but these conditions are subsequent."

In the case at bar, the grant is *in presenti*—"I give and adjudicate." Nothing further was to be done by the government. It is not even provided in the grant that it shall be defeated, in the event of a non-compliance with the condition of settlement.

This, then, being a perfect title, it rests with the United States to show that it had been defeated prior to acquisition of the sovereignty by the United States, by proper proceedings on the part of the grantor, for non-compliance with the condition. This they do not show, nor attempt to show, so that at the time this government acquired the sovereignty over the territory in which this grant lies, it still remained a perfect title in the grantee, or those lawfully holding under him. But, if the law were otherwise, and it rested upon the grantee, and those claiming under him, to show that the conditions annexed have been complied with, still the grant ought to be confirmed.

In considering these questions the court is a court of equity. The act creating the Court of Private Land Claims provides:

"All proceedings subsequent to the filing of the petition shall be conducted, as near as may be, according to the practice of the courts of equity of the United States."

"Equity abhors a forfeiture."

It appears by the evidence in this case (record, pages 63, 64, 65) that repeated attempts had been made by the grantee to perform the condition annexed, but that he was prevented and driven back by the hostile savages infesting that region; and it is a matter of history, of which this court must take judicial cognizance, that from the time of the acquisition of this title until this territory passed under the dominion of the United States, by the Gadsden treaty, this portion of the country was overrun by hostile tribes of savages, warring between themselves, and aggressively resisting any efforts to settle the country, and that no white man's life was safe there, until these savage tribes were overawed and subdued by the power of the United States.

The evidence is clear and uncontroverted that shortly after the Gadsden purchase, and as soon as there was protection to life, Juan A. Robinson took possession of this land, and remained in possession until he sold the property to The Commercial Land Company. This company was, and for many years had been, in actual possession of the land, at the time Judge Sanford purchased the same. Like possession was held by him, by the Algodones company, and by the appellee, who has in good faith expended large sums of money in cultivating, building, irrigation canals and improving the property.

In Arredondo's case, the court say:

"Great allowance must be made, not only from the distracted state and prevalent confusion in the province at the time of the grant, but until the time of its occupation by the United States, though a court of law must decide according to the legal construction of the condition, and call on the party for a strict performance; yet, a court of equity, acting on more liberal principles, will soften the rigor of the law, and though the party cannot show a legal compliance with the condition, if he can do it *cy pres*, they will protect and save him from a forfeiture."

"All favorable presumptions will be made against the forfeiture of a grant."

Gonzales vs. Ross, 120 U. S., 605.

"It is a condition subsequent, which at the worst only left the title of the grantee open to be denounced, but as the claimant was hindered from performing it by the revolutionary state of the country, the non-fulfillment of it would not work forfeiture of his title."

U. S. vs. Vaca, 18 Howard, 556.

"Regarding the grant of Alvarado, therefore, as having given him a vested interest in the quantity of land therein specified, we proceed to inquire whether there was any breach of the conditions annexed to it during the continuance



of the Mexican authorities which forfeited his right and revested the title in the government.

"The main objection on this ground is the omission to take possession, to have the land surveyed, and to build a house on it within the time limited in the conditions. It is a sufficient answer to this objection to say that negligence in respect to these conditions, and others annexed to the grant, does not of itself always forfeit his right. It subjects the land to be denounced by another, but the conditions do not declare the land forfeited to the state, upon the failure of the grantee to perform them."

Fremont vs. U. S., 17 How., 442.

In another place, in the same case, it is said:

"Now it is very clear from the evidence that during the continuance of the Mexican power it was impossible to have made a survey, or to have built a house on the land, and occupy it for the purposes for which it was granted. The difficulties which induced the governor to dispense with a plan, when he made the grant, increased instead of diminished. We have stated them very briefly in this opinion, but they are abundantly and in more detail proved by the testimony in the record. Nobody proposed to settle on it, or denounce the grant for a breach of the conditions. And at the time when the Mexican authorities were displaced by the American arms, the rights which Alvarado had obtained by the

original grant remained vested in him, according to laws and usages of the Mexican government, and remained so vested when the dominion and control of the government passed from Mexico to the United States."

It having been impossible to comply with the conditions annexed to this grant, until the dominion of the country had passed to the United States, a nation whose laws, customs and usages differed in the extreme from the ceding nation, the performance of the condition is excused and the grant is single.

"It is an acknowledged rule of law, that if a grant is made on a condition subsequent, and its performance becomes impossible by the act of the grantor, the grant becomes single. We are not prepared to say that the condition of the settling two hundred families has been or is possible; the condition was not unreasonable or unjust at the time it was imposed. Its performance would possibly have been deemed a very fair and adequate consideration for the grant, had Florida remained a Spanish province. But to exact its performance after its cession to the United States would be demanding the *summum jus* indeed, and enforcing a forfeiture of principles which, if not forbidden by the common law, would be utterly inconsistent with its spirit. If the case required it, we might feel ourselves at all events justified, if not compelled, to declare that the performance of this condition had be-

come impossible by the acts of the grantors, the transfer of the territory, and the change of government, manners, habits, customs, laws, religion, and all the social and political relations of society and of life. The United States have not submitted this case to her highest court of equity on such grounds as those; we are not either authorized or required by the law which has devolved upon us the final consideration of this case to be guided by such rules or governed by such principles in deciding on the validity of the claimant's title. Though we should even doubt, if sitting as a court of common law, and bound to adjudicate this claim by its rigid rules, the case has not been so submitted. The proceeding is in equity; according to its established rules our decree must be in conformity with the principles of justice, which would in such a case as this not only forbid a decree of forfeiture, but impel us to give a final decree in favor of the title conferred by the grant."

United States vs. Arredondo, *supra*.

There is another fact present in this case that appeals even more strongly to a court of equity. *Rodriguez paid his money to the state of Sonora for this land, an adequate consideration.* In the Fremont case it is said:

"The words of the grant are positive and plain. They purport to convey to him a present

and immediate interest, and the grant was not made merely to carry out the colonization policy of the government, but in consideration of the previous public and patriotic services of the grantee. This inducement is carefully put forth in the title papers, and although this can not be regarded as a money consideration, making the transaction a purchase from the government, yet it is the acknowledgment of a just and equitable claim; and when the grant was made on that consideration, the title in a court of equity ought to be as firm and valid as if it had been purchased with money on the same condition."

There is nothing in the act creating the Court of Private Land Claims which requires it to depart from, or narrow the application of, the high principles that have alike characterized the legislation of our government and the judgments and decrees of her highest judicial tribunals, in respect of property rights in ceded territory. It is but confirmatory of the observations of Mr. Justice Field in the case of *The United States vs. Auguisola, supra*.

The answer of the United States, so far as it relates to the condition annexed to the grant, is evidently upon the theory that this case is within the provisions of the eighth subdivision of section 13 of the act creating the Court of Private Land Claims. Such is not the case. The eighth subdivision has no application

to such title as the one now presented to the court. It is well known that a large number of what are commonly called grants in Florida and Louisiana, as well as in the territory acquired from Mexico, were not grants in an accurate sense. They were incipient, inchoate titles, which required some further act on the part of the government after the fulfillment of the conditions, in order that a complete title might be vested in the claimant. They were frequently denominated concessions. They were simply an authorization to acquire at some future time a title.

Glenn vs. United States, 13 Howard, 250.

United States vs. Mills Heirs, 12 Peters, 250.

United States vs. Kingsley, *idem*, 477.

Fremont vs. United States, *supra*.

United States vs. Hanson, 16 Peters, 196.

Hancock vs. McKinney, 7 Texas.

A concession is "whatsoever is granted as favor or reward as privileges granted by the prince."

De Haro vs. United States, 5 Wall., 599.

That this subdivision has reference to such incipient titles, and to such only, is plain from the language used. "No concession, grant or other authority to acquire land," is the language of the section.

Is it not plain that the word "grant" is not used in this subdivision in the sense of an absolute title?

We are not here upon a concession claiming a right to acquire land. We are here asking this court to say that our grantor did acquire land, and to quiet our title thereto, as against the United States.

#### RECORD OF THE GRANT.

This title was duly recorded," as required by the 6th section of the treaty. This is denied by counsel for the United States upon the ground that no note is made in the book called "Toma de Razon" of the issuance of the title, and the following cases are cited:

United States vs. Vallejo, 1 Black. 549.

United States vs. Osio, 23 How., 273-279.

United States vs. Teschmaker, 22 How., 392-345.

The case at bar, however, is to be distinguished from these cases. In the Vallejo case, the only document in evidence in support of the title of the claimant was the naked grant, upon which the secretary had made the following notation: "Note has been made of this title in the respective book." This was shown to be untrue. The reason given by the court for insisting that record of the grant should appear

in the archives was that "without this grant the officers making the grants would be enabled to carry with them in their travels blank forms and dispose of the public domain at will, leaving the government without the means of information on the subject till the grant is produced from the pocket of the grantee." It is to be observed also that this judgment was by a divided court, Justices Grier and Wayne vigorously dissenting.

In the case at bar the original documents were shown to be on file in the archives of the state of Sonora; they were examined by the justices of the Court of Private Land Claims, who traveled to Hermosillo for that purpose, and were by the whole court pronounced genuine. There is also a record of the payment of the purchase price, fees and charges. So that the reason given in the Vallejo case for insisting upon the memorandum in the index of titles has no force here. The Toma de Razon, it appears, was simply a memorandum or index of titles, and the original documents being found in the proper archives are surely much higher evidence of the grant than would be a simple memorandum that the title papers had been issued.

The grantee is not to be held responsible nor to suffer loss for the failure of a clerk to perform his

duty; particularly when he shows all of the original documents to be in the archives of Sonora.

In the Osio case, there was a simple license to occupy; no interest in the land had been acquired by the petitioner. The duplicate copy of the grant from the Mexican archives bore no signatures. Here the expediente found in the archives is complete, and bears the signatures of the proper officers, proved to be genuine.

In the Teschmaker case, the court, commenting on the absence of record evidence, say: "The non-production of this record evidence of the title, under the circumstances, is calculated to excite well grounded suspicions as to its validity, and throws upon the claimant the burden of producing the fullest proof of which the party is capable of the genuineness of the grant. We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title; but it should be produced, or its absence accounted for to the satisfaction of the court."

As has been observed, the appellee showed that the original documents were in the archives at Hermosillo, where they ought to be. They were shown to be genuine by abundant proof, to the satisfaction of all of the justices of the court below.



A great deal of speculation has been indulged in, because there was not found in the book called *Toma de Razon* a note, memoranda or register of the Algodones grant. The memoranda of grants found in this book are substantially as follows: On the ..... day of ....., 18.., there was issued by this treasurer general, in favor of ....., the corresponding title of .....sitios of land which is comprised in the place called ....., and to which this expedienti refers.

We will briefly consider how the book is made up, and of what it consists. It is in shape of an "old-fashioned school copybook," unfolded sheets stitched together and then parchment bound. It contains eighty-two pages, sixty-eight of which are of paper, with the seal of the state stamped (printed) at the head of each sheet. This sealed paper is all of the same kind and of the same year. The remaining sheets consist of common paper without stamp or seal; each of these pages has two and sometimes three memoranda of grants like the above; the first entry in the book is dated October 4, 1831, and the last dated 1849. The sixty-eight pages of stamped paper contain entries from date of October 4, 1831, to October 30, 1845. The margin of each of these pages

bears the rubrica of Jose Maria Mendosa, treasurer general of the state. (Record, pages 86, 169, 180-181.)

Upon these loose sheets of paper are found original writings or drafts of instruments. Hundreds of these appear in the archives of the state of Sonora; they are the original evidences of a record, and called "borradors." From these, all records of expedienti, testimonios and other instruments are made up. (Record, page 180.) Three times the records of Sonora have been removed from the capitol at Arispe to Ures, and then to Hermosilla. It is but five years since the records were arranged as they now are, and before then there must have been but little security for their safe keeping. Even now it is an easy matter to mislay or lose many of these original "borradors." We believe that this book was all made up at one time; there can be but little if any doubt that this is true of the sixty-eight leaves of sealed or stamped paper. First, because all of the sealed paper is of the stamp or seal of the same fiscal year, namely, 1831-1832. Second, because each of the pages has the rubrica of the same officer; and third, because this officer—Jose Maria Mendosa—was not treasurer general during all the years that this book purports to have been used. If our conclusions are right about this, the book was made from these original "borradors," and it is not a matter of wonder if in

making up this book, the officer failed to find many of these original drafts.

Keeper of the archives, Rochin, testifies: "There are a great many (records of grants) that are not in the *Toma de Razon*, and those issued during the month of April, 1838, are wanting, because that book of *Toma de Razon* was taken away from here of that date, some years ago. It is already five years since I have been in charge of the archives, and it was not here then. (Record, page 86.)

And Judge Robinson testifies that many grants, issued during the year 1838, were not mentioned or recorded in the *Toma de Razon* in 1881, when he made an examination of that book.

Record, pages 98-99.

It is true that Special Agent Tipton testified at Santa Fe that he had examined the *Toma de Razon* and found an entry of all the grants referred to by Mr. Robinson with the exception of one (a comparison of names given by each will show he should have excepted two). Mr. Tipton cross-examined said Robinson at Hermosillo, and it is unfortunate that he did not call his attention, or that of the judges of the court, to this error, if error it was, in the testimony of Judge Robinson. And then again Judge Robinson made examination of this book in 1881, and it would

seem from the testimony of Mr. Rochin that the book was missing for some time after that period.

Special Agent Hopkins reports to the government that there are in the archives of Sonora from 1,200 to 1,500 original expedienti of grants, and this book contains a note of only about 225 of these.

Record, page 179.

The objection that the grant is fraudulent and void rests mainly upon the allegation of counsel that it is not mentioned in the list of *Expedientia*, known as "Jimeno's Index. \* \* \* Under the circumstances of this case, if the facts were as alleged, it would not be entitled to much weight."

U. S. vs. Anguisola, 1 Wall., 352.

*Mr. Aguilera*

~~Both~~ Mr. Rochin and Mr. Robinson testify that there is a full record of the issuance of this grant in the office of the treasurer general of the state. The claimant should not be defeated by the failure to find a memorandum of the grant in a book so unworthy of credence as this Toma de Razon is shown to be. Nor can we believe that the misprision of a clerk, if such is the fact, in failing to make the memorandum, will be permitted to defeat an undoubted sale and conveyance to a good faith purchaser for a valuable consideration.

In conclusion—I have not attempted to follow each of the objections of a close technical nature urged by the learned counsel, in his able argument, because I am convinced that the rights of the claimant will be determined upon higher and broader principles. While this brief is being printed, I again read the argument of counsel, and think perhaps attention should be called to some of his observations, which I omitted in their regular order.

It is urged that the national laws of August 4 and 18, 1824, were repealed by the adoption of the constitution of 1836, and the subsequent legislation of 1837. There is nothing in this constitution or these enactments directly repealing these laws; nor can it be said that the laws of 1824 are inconsistent with those of 1836-1837. I have tried to demonstrate that the national government, after the change to the central system, expressly recognized, in a circular approved by the president of the nation, dated on the 25th day of May, 1838, hereinbefore quoted, that the old enactments were still in force. That such was the understanding of the Mexican authorities, is made certain and clear by the language used by President Jaurez, March 2, 1859, in approving a grant made in Lower California, to Emelio Leya and Juan Carlos Duprat, as follows:

"That in conformity with the instructions for the new founders of Lower California, issued by the royal commissioner, Count D. Jose de Galvez, in the town of Santa Anna, in that peninsula, the 12th of August, 1768, the law on colonization decreed by the sovereign general congress, on the 18th of August, 1824, and the supreme regulations for the *territories* of the republic, decreed on the 28th of November, 1828," etc.

Counsel asserts, on page 89 of his brief, that Sonora and Sinaloa was the only state of the Mexican republic that claimed the right to dispose of the public domain by virtue of the laws of August 4, 1824. It is possible that counsel is correct in this statement. I am, however, informed by high Mexican officials, and Mr. Frederick Hall, who is at least as familiar with the history of the different states of Mexico as any American lawyer, that counsel's statement is not correct, and that many of the other states of Mexico claimed the right to dispose of their lands by virtue of the law of August 4, 1824.

On page 90 of brief, it is said that on May 20, 1825, Sonora and Sinaloa passed a law for the disposition of the public lands, and made no reference to authority that the state had for so doing. I think it has been shown in the communication of the state congress to the governor of Sonora, of May 9, 1825, quoted

*supra*, and by section 293 of the state's constitution, that counsel is in error in this statement.

This court has confirmed the judgment of the Court of Private Land Claims, in the two cases appealed therefrom, in which a decision has been announced, and I am persuaded that counsel is scarcely justified (brief, page 23) in saying: "From the inception of the litigation before the lower court to the present, strong and persistent effort has been made, and in my opinion not always unsuccessful, to induce the Court of Private Land Claims to ignore the limitations and restrictions upon, as well as the legal sufficiency of proof which would justify a judgment of confirmation in any case."

These observations are followed by others of like kind, found at page 33 of brief.

It would seem that the learned justices of the court below have enforced obligations under treaty stipulations in a manner befitting a great nation, and have endeavored to follow the former adjudications of this court construing similar treaties. The opinion of counsel that congress intended by the passage of the present act to restrict or narrow the powers of the court, as before understood, is scarcely justified in view of the following, from Mr. Justice Shiras: "We do not so regard that provision (referring to the provisions of the act creating the Court of Private Land

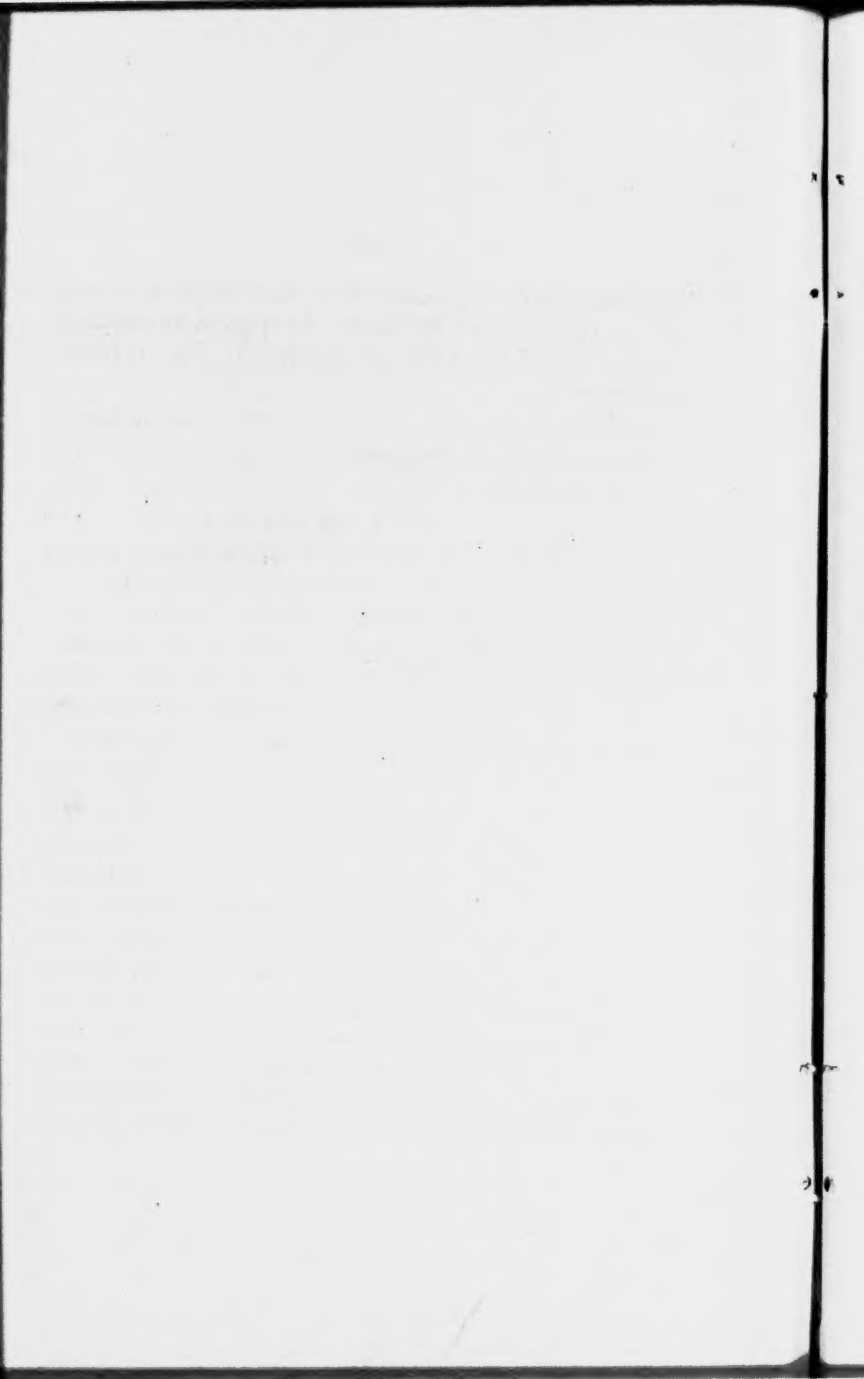
Claims), nor do we perceive in any features of the act an intention on the part of congress to restrict the powers of the court recognized by the previous decisions."

We believe that law, equity and justice are in favor of the decision of the court below, and respectfully ask for its affirmation.

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## In the Court of Private Land Claims.

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JUAN PEDRO CAMOU, }  
                                  vs. }  
THE UNITED STATES. }

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### DISSENTING OPINION, MR. JUSTICE SLUSS.

Not being able to agree with the majority of the court in its conclusions in this case, and the questions involved being of importance as well as of interest, I have felt justified in recording my dissent from the conclusion of the majority of the court in this case.

The first question presented is, Did the state of Sonora, at the time of the making the grant in this case, have authority to make it as it was made?

On August 4, 1824, the federal congress of Mexico passed a law generally known as the law for the classification of the revenues.

This law somewhat minutely specified the revenues which thereafter should belong to the nation. These specifications are contained in the first nine articles. The ninth article is the only one providing for the revenue arising from land. This section in the original reads: "9. Los bienes nacionales, en los que se

comprehenden los de la inquisicion y temporalidades y cualesquiera otras fienas rusticus y urbanos que pertenieren o que pertenecieren en lo de adelante hacienda publica." This section is ordinarily translated: "9. National property, in which is included those from the inquisition and temporalities of the clergy, or any other rental or urban property which belongs or shall hereafter belong to the public exchequer."

By an examination of the original Spanish, it will be observed that the Spanish word which has been translated "property," in the expression "national property," is *bienes*, and that the Spanish word which has been translated property in the expression "any other rural or urban property" is *fincas*.

It will be conceded that any person familiar with the Spanish that neither of these words is ordinarily used to express the idea of vacant public lands, or public domain. *Bienes* is a word ordinarily used to convey the idea of property in its general sense, which has been reduced to actual use, and may consist of either chattels or realty, but is never used to mean distinctively vacant public land, nor in that sense. So that if we meet with this word in a law or any kind of document or speech, we would not be authorized to regard it as referring to the public domain

unless from the context it affirmatively appears to have been used in that sense.

The word *finca*s signifies property; not property in a general sense, but a particular class of property, usually real property, which has at some time been reduced to private ownership, and capable of producing a revenue by its use or leasing. It seems to me reasonable to say that both these words were used in the sections under consideration in the same sense, and in the sense in which they were used in ordinary speech, which would exclude the idea of public domain.

Article XI. provided that the revenues not comprehended in the preceding articles should belong to the states.

In my opinion, therefore, the revenues, to be derived from the disposal of the public domain within the states were intended to belong to the states respectively.

This construction is strengthened by the following considerations:

The term "national property" in the article referred to is followed by a specification of the classes of property intended to be included.

The universal rule of construction is that, where general words in a statute are either preceded or followed by particular words, the general words will

be construed to refer to the particular class or classes named in the particular words, and their meaning limited accordingly. Construing article IX. by this rule, it follows that the only reference from real property reserved in the federation therein was that from the inquisition and temporalities, which, as we well know, were improved properties, and any other town or country property capable of producing a revenue by being used or leased.

The proceeding of the collection and disbursement of revenue is essentially an executive function, but, under a republican constitutional form of government like that of Mexico, the executive department could have no authority to collect revenue or dispose of the public land for that purpose except such as was conferred by a law of the national congress.

We may, therefore, naturally suppose that if it had been the purpose of the congress to reserve to the nation the revenues from the disposal of the public domain, there would have been provision made to carry such purpose into practical operation by authorizing the executive department to dispose of it, or by making it subject to the operations of the national treasury. Now the only provision found in the law of August 4, 1824, authorizing the disposal of real property belonging to the nation is article X., which reads, as translated: "The buildings, offices,

and the lands attached thereto, which belong or have belonged to the general revenues, and those which have been maintained by two or more of what were formerly provinces are at the disposal of the government of the federation." It will be observed that the class of real property described in this article, and which the government was authorized to dispose of, was of the exact same class which I have endeavored to show was reserved to the revenues of the federation in article IX.

The significance of this provision is seen when considered in connection with the provisions of the law of August 18, 1824, commonly known as the colonization law. It has never been questioned that the subject matter of legislation of the latter law was the vacant public lands.

Article III. provided that the congress of the states should provide for the colonization of the land within their respective limits, subject only to certain restrictions specified in the law itself.

Article XVI. provided that the government should proceed to the colonization of the territories, subject to the same restrictions. These two sections taken together show conclusively that the states were empowered by a system of colonization to be formulated by themselves, subject to the restrictions specified, to dispose of all of the public domain within their re-

spective limits, and that the executive department of the government was authorized by a system of colonization to be formulated by it, subject to the same restrictions, to dispose of the public domain within the limits of the territories, and within the territories only.

On September 21, 1824, a law was enacted providing for the collections and disbursements of the revenues of the federation. It authorized the executive to appoint in each state a commissary general of the different branches of the federal exchequer. Article IV. provided that this commissary should collect and disburse the proceeds from the revenue and the contingents of the state.

Article V. specified the revenues which he was authorized to collect, and among the others specified, the revenues from the same class of lands which I have endeavored to show were reserved to the federation by the law of August 4, 1824, and did not include any specifications applicable to the public domain.

It authorized this commissary to collect the "contingents of the states." These contingents were certain sums of money which were to be paid by the states to the federation, as provided for in the law of August 4, 1824. They were provided for as part of the same law with and are to be considered in the

light of the provision granting to the states the revenue from the public domain, and it seems reasonable to conclude that the one was the consideration for the other. When we consider these three laws together, and the fact that they were enacted by the same congress and within a few days of each other, they appear to be parts of the comprehensive and harmonious system for the colonization and disposal of the public lands and of providing a revenue as an incident thereto, which system was that of the vacant lands within the states should be disposed of and the revenue therefrom collected under the direction of the states respectively, in consideration of which the states were to pay to the federation the sums provided for in lieu of the revenue which the federation might obtain by the disposal of the vacant lands under its own direction for its own benefit. But whether my supposition as to the consideration for these contingents is correct or not, it seems to me incontrovertible that by this legislation the states were fully empowered to convey a good title to any or all the vacant public land within their limits.

In this connection it should be said that it is immaterial whether the legal title to these lands passed from the federation to the state. The federation could retain the fee and at the same time authorize the state to convey a good title, and this is my



opinion as to what was in fact done. Conceding to the states the right to revenue or proceeds of the sales of the public lands by implication conceded all of the power necessary or appropriate to make the right effectual. And as revenue could only be obtained by sales of the land, the power to make such sales passed with and as an incident of the right to obtain the revenue.

On April 6, 1830, the congress of the federation enacted a law, in article III. of which it was provided: "The government shall have power to appoint one or more commissioners to visit the colonies of the frontier states, to contract with their legislatures for the purchase, in the name of the federation, of the lands they may consider suitable and sufficient for the establishment of colonies of Mexicans and of other nations." And by article IV. it was provided: "The executive shall have the power to take the lands he may consider suitable for fortifications and arsenals and for new colonies, and shall give the states credit for their value on the account they owe the federation."

These provisions have reference to vacant public lands, and show that the federation recognized the fact that the states had a pecuniary interest in the lands of the public domain, and that these lands

could not be taken from the states without their consent and the allowance of their value therefor.

In all these Mexican statutes, it should be understood, the word "government" is used to denote the executive department, and the words government and executive are used interchangeably.

On January 26, 1831, a law was enacted by the congress of the federation, establishing a general department of the revenues, under whose control should be all branches of the exchequer administered for the federation, except the mail and the mint.

Article XIII. provided: "The proceeds from national property (*bienes nacionales*) shall be collected by commissioners under the immediate direction of the general department."

On July 7, 1831, there were issued regulations for carrying into effect the provisions of the foregoing law of January 26, 1831, it divided the operations of the treasury into three branches, and specified the particular revenues to be collected by each. In the first branch was placed "national property (*bienes*) in which is included under article IX. of the law of August 4, 1824, that of the inquisition and the temporalities and all other country or town property (*fincas*) belonging to the federation." There is no other provision or regulation for revenues from any other class of real estate, thus showing that pro-

ceeds derived from the vacant public domain did not pertain to the revenues of the federation.

On May 20, 1825, the state of Sonora enacted a law for the colonization and disposition of the vacant public lands within its limits. It provided for the raising revenue by means of the disposal by sale of the public lands, and further provided that no one could obtain any part of the public lands who did not show that he required the lands for his actual use and occupancy. The constitution of the federation required that copies of all laws enacted by the states should be certified to the congress of the federation, which was given power to repeal or nullify any objectionable law so enacted by the state.

We are compelled to indulge the presumption that this requirement of the federal constitution was complied with, and that the federation had full notice of this law of Sonora.

This law was never at any time repealed or nullified by the congress of the federation. These circumstances afford the most convincing proof of a practical construction given by the federation to its own laws of August 4 and 18, 1824, and that such construction was to the effect that the states were empowered to convey title to the public lands.

It was during the time when the law of August 4, 1824, and the law of August 18, 1824, and the law

of May 20, 1825, of the state of Sonora were in force that the grant of land in question in this case was made.

In the light of the legislation I have recited, I can come to no other conclusion than that the grant, when made, was good and valid.

There has been a contention that the law of May 20, 1825, was invalid, for the reason that it was not a law for the colonization, but a law for the sale of the public lands.

I think, as I have before intimated, that a fair interpretation of the law shows that no part of the public lands could be obtained under it except for purposes of actual use and occupancy.

It did not require actual inhabitancy of the land by the grantee, but I have no knowledge of any colonization law of either Spain or Mexico which required actual inhabitancy by the grantee of the granted land except in cases of *empressario* contracts, and no such law has been called to our attention.

The fact that it made the raising a revenue an incident or feature does not destroy it as a colonization law. From the very beginning, both under the Spanish and Mexican rule, the securing a revenue from the proceeds of the public lands was made a more or less prominent feature of colonization. Requiring the

grantees to pay something for the land is not repugnant to the idea of colonization. A very striking illustration of the Mexican conception of the matter is shown by the law enacted by the federal congress, April 4, 1837, which provided that the government, in concurrence with the council, should proceed to make effectual the *colonization* of the public lands by sales, leases or mortgages; showing that a sale of public land was in harmony with the idea of colonization.

But to my mind the conclusive answer is to be found in the fact that the law of the state of Sonora providing for the sale of the public lands within its limits was permitted to remain in force for so many years unrepealed and not interrupted with, and the further fact that during the time from the enactment of the law of Sonora until April 4, 1837, there was no law of the federal congress in force authorizing any office of the federation to dispose of any of the public lands within the state of Sonora.

In my opinion, therefore, the grant in this case was valid, and vested in the grantees a right and property in the land granted such as is protected by the provisions of the treaty known as the Gadsden purchase, and such as is protected by the principles of public law in the absence of treaty stipulation on the change of sovereignty over the land.

The next question is as to whether the right of property which the original grantee obtained was taken from him by the decree of Santa Anna, issued November 25, 1853.

This decree was issued by Santa Anna as president of the republic of Mexico. It reads:

"Article I. It is declared that the public lands, as the exclusive property of the nation, never could have been alienated under any title by virtue of decrees, orders and enactments of the legislatures, governments or local authorities of the states and territories of the republic.

"II. Consequently it is declared that the sales, cessions, or any other class of alienation of said public lands that have been made without the express order and approval of the general powers, in the manner prescribed by the laws, are null and of no value or effect."

This decree was not issued under the authority of any law of the congress of the republic, or of the constitution, but depends for its validity, in so far as it attempts to deprive the grantees of the rights of property vested in them by the sales in question, upon whatever power Santa Anna possessed as president of the republic.

Santa Anna was president of the republic. The powers and functions he exercised were delegated

powers. The president was the executive of the nation, not its law-maker nor its judiciary. In Mexico the lives and property rights of the citizens were as inviolate as they are in the United States. There never was delegated to the executive the power to deprive any citizen of his property. We can not assume that Santa Anna had such power from the bare fact that he undertook to exercise it, but before we act on such an assumption it should be made to plainly and clearly appear.

As is well known, the statute of the Mexican nation was based upon the declaration of principles contained in the plan of Iguala.

By article XII. of that instrument it was declared: "All inhabitants, without other distinction than their merits and virtues, are citizens, with the right to choose their own vocations."

Article XIII.: "Their persons and property shall be respected and protected."

On October 4, 1824, a permanent constitution of the nation was adopted, in which it was declared: "Article CXLVII. Confiscation of property is forever prohibited. Article CXLVIII. Every judgment by special commission and every retroactive law is forever prohibited." This constitution was readopted August 22, 1846.

These show the fundamental principles as to the rights of property on which civil government in Mexico was deemed to be based.

Santa Anna was elected chief executive of the republic in pursuance of what are known as the plan of Guadalajara and plan of Jalisco, finally adopted February 6, 1853.

The first declaration contained in the plan of Guadalajara is: "The Mexican nation is one alone and indivisible, constituted under the popular representative system." This declaration seems to me to exclude the idea that the chief executive could have other than delegated powers. Autocratic power is inconsistent with and repugnant to the idea of a popular representative system.

Article II. of the plan of Jalisco provided: "That the executive power, which shall be elected in conformity with this agreement until the new political constitution yet to be found shall be promulgated, shall have the necessary faculties for the re-establishment of social order; to organize the public administration; to form the national treasury; and to expedite the functions of the judicial department, introducing into the same necessary reforms without interfering with its independence." These are the powers delegated. They were all executive in character. He was not given legislative power, and the very dec-



laration recognizes the existence of a separate judiciary, which was to be wholly independent. He was not delegated the power to determine what laws of the nation were or were not constitutional, or what laws of the states should or should not be appealed. There is not a word or a line indicating that his powers were not limited by the fundamental principles of the rights of property of which the nation was constructed. I am of the opinion, therefore, that the decree of November 25, 1853, could not and did not have the effect to deprive the grantees of the right of property in the land which was vested by the grant, and that this right of property in the land existed as completely at the time of the taking effect of the treaty of cession as did prior to the issuance of Santa Anna's decree.

It is supposed that Santa Anna was authorized to determine whether, as a matter of law, the grants of land were valid as against the general government. But no law of the nation can be found conferring upon him any such function. Under the Mexican system the national congress was the judge of the constitutionality of the laws it enacted. But Santa Anna was only chief executive and not the congress, and no law is to be found conferring upon him the functions of the congress in this respect; and as I have before remarked, his assuming to exercise the power was

not of itself sufficient evidence of the power, nor sufficient evidence of the existence of the power. Therefore his declaration that the law of Sonora under which the grant was made was null, was not binding upon the grantees, nor did it have the effect of a judicial determination against them. There can be no such thing as a judicial determination without a hearing, even in a summary determination without a trial, in a sovereign state.

The next and more serious question in the case arises upon the contention: First, that by the treaty of cession the United States has recognized the authority of Santa Anna to determine the status of all of the property within the ceded territory at the time of the treaty, and that his determination being so recognized, is binding. And second, that the declaration of Santa Anna that all grants of land made by the state of Sonora were null operated as an inducement to the treaty, and therefore became binding in favor of the United States.

A treaty like the one in question has two distinct phases. In the first place, it operates as a contract between the parties to it, and, as such, is to be construed like contracts between individuals. In the second place, it operates as a law or statute affecting the citizen, and binding his person and property in the same manner as any other law.

A treaty affects the property rights of the citizen as a law, and because it is a law, and as the supreme law of the land.

As a contract between the two nations those matters which operated as an inducement to its execution may, perhaps, properly be considered as entering into and binding upon the parties as contractors, although not written into its terms.

But as a law affecting his rights of property, the citizen is only affected by what is expressed in the treaty. A citizen's rights of property may be taken from him by a treaty as the supreme law of the land, but it is the terms of the treaty and the terms of the treaty alone which has this effect, and not some extrinsic ulterior fact operating upon one of the contracting parties as an inducement to enter into it.

The point I wish to make is, that for the treaty to be held to have recognized Santa Anna as having authority to determine and declare the status of the property ceded as to being public or private, it must have been expressed in the treaty itself. In order that the declaration of Santa Anna, that all grants of land made by the state of Sonora were void, be held to be confirmed by virtue of the treaty, a provision to that effect must have been made part of the treaty itself. How can the citizen know what is made part

of a law except what he can see has been actually incorporated into it?

I do not know that this precise question has been directly decided by the Supreme Court, but there are a few cases illustrating to an extent the proposition I am discussing. It is generally held, and by the Supreme Court of the United States, that a treaty takes effect from its execution, and that ratification related back to the date of signing. The case of *Haver vs. Yaker*, 9 Wall., 32, however, holds that this is true only in so far as the treaty operates as a contract; and that in so far as it operates as a law affecting the personal rights of the citizen, it takes effect only from the date of ratification. The idea expressed is, that a citizen can not be affected in his personal rights by a treaty any further than he can know what it is.

In the case of *United States vs. Yorba*, 1 Wall., 412, a question arose on the treaty of Guadalupe-Hidalgo. In the regulation of that treaty a declaration was made on behalf of Mexico, that no grants of land had been made in the territories after the 13th day of May, 1846. The United States resisted a confirmation of a claim on a grant made after that date. The court says that even had the treaty been concluded in reliance upon the truth of the declaration, that fact could not affect the rights of parties who, subsequent to the date specified, obtained grants of land from

the governors of California while their authority and justification continued; and that the rights of the citizens to their property depends upon the authority of the officers to make the grant at the time that it was made, and not upon the subsequent declaration of the commissioner to negotiate the treaty on the subject.

It is easy to see the reason of the principle announced by the court. The declaration was not made part of the treaty, and did not become part of the law of the treaty, and therefore not binding as a law upon the citizen as to his private property. The case of *Doe vs. Braden*, 16 How., 635, is an interesting one, as illustrating the point in question.

After the negotiation of the treaty between the United States and the king of Spain for the cession of Florida had been begun, the king made certain grants to large tracts of land within the limits of the proposed cession. After the treaty had been signed, but before ratification, the fact came to the knowledge of the United States. Before the United States would ratify the treaty, Mr. Adams, secretary of state, insisted that a written declaration, to the effect that the grants were thereby annulled, should be made by the king and attached to and made a part of the treaty, which was finally done. The court held that by reason of the declaration of the king having

been attached to and made a part of the treaty, it became a law binding upon the grantees of the land, and as such law had the effect to annul the grants. A careful study of that case, it seems to me, shows that it is a recognized principle, that the declarations of one of the contracting parties outside the treaty, although made and operating as an inducement to the treaty, can not affect the private rights of the individuals, unless they are incorporated with and made part of the treaty itself. It was not the declaration of the king of Spain which had the effect to annul the Alagon grant, but it was the treaty entered into by the United States government, and which became the supreme law of the land, that annulled the grant.

The negotiation of the treaty of cession by the United States with Santa Anna was a recognition of his authority to make it, and of his authority to cede by means of the treaty all that the republic of Mexico owned within the ceded territory. But it was not an adjudication of what the nation did own within these limits. It was a recognition of his authority to make all of the stipulations and provisions which were contained in the treaty. And if the treaty had contained a clause declaring all grants of land made by Sonora to be void, it would have been a recognition of his authority to insert such a clause, and the treaty

with such a clause inserted would have invalidated all such grants. But this would not have been a recognition of the power of Santa Anna to do what he attempted by his decree of November 25, 1853. The effect of the treaty would in no way have depended upon that decree; the grants would have been null, because the treaty so declared, and not because Santa Anna has so declared as an inducement to the treaty. In other words, then, recognition of Santa Anna as the treaty-making authority, was not the recognition of the existence of any other power claimed or exercised by him, or of his power to affect the private rights of individuals in any other way than by means of provisions inserted in the treaty itself.

The treaty-making authority of the United States is the president and the senate. Suppose the president should issue a decree to the effect that all patents issued on desert land entries in Arizona were without lawful authority and void, and that his decree should be ratified by a resolution of the United States senate. We would all say the proceeding was wholly void, and did not deprive the patentees of their property in the land. The fact that the president and the senate constitute the treaty-making powers, does not show that they have any other power, or that they can affect private rights in any

other way than by means of the express terms of the treaty.

But suppose that a month, or any other period, after making such decree by the president, a treaty should be made by the president and ratified by the senate, ceding the state of Arizona to Mexico, in which no mention should be made of the validity or invalidity of desert land entries—would we say that fact altered the legal effect of the prior decree of the president declaring them void? Certainly not. And yet, if the treaty they made contained a clause nullifying all such entries, or declaring them to be void, we would all say that the entries were rendered null—not by reason of the prior decree of the president, but by reason of the clause contained in the treaty. It is certainly true that the treaty-making power of the country has the power to declare the status of all of the property that it cedes by treaty to another country; but it is equally true that the only way in which such declaration of status can be made to affect private rights is by means of the treaty itself. The declaration must be the declaration of the treaty in order to affect private rights. In the case of the Gadsden treaty, there was a specification of the class of grants of the land within the ceded territory which would not be recognized. If it had been the intention of the United States to confirm by the

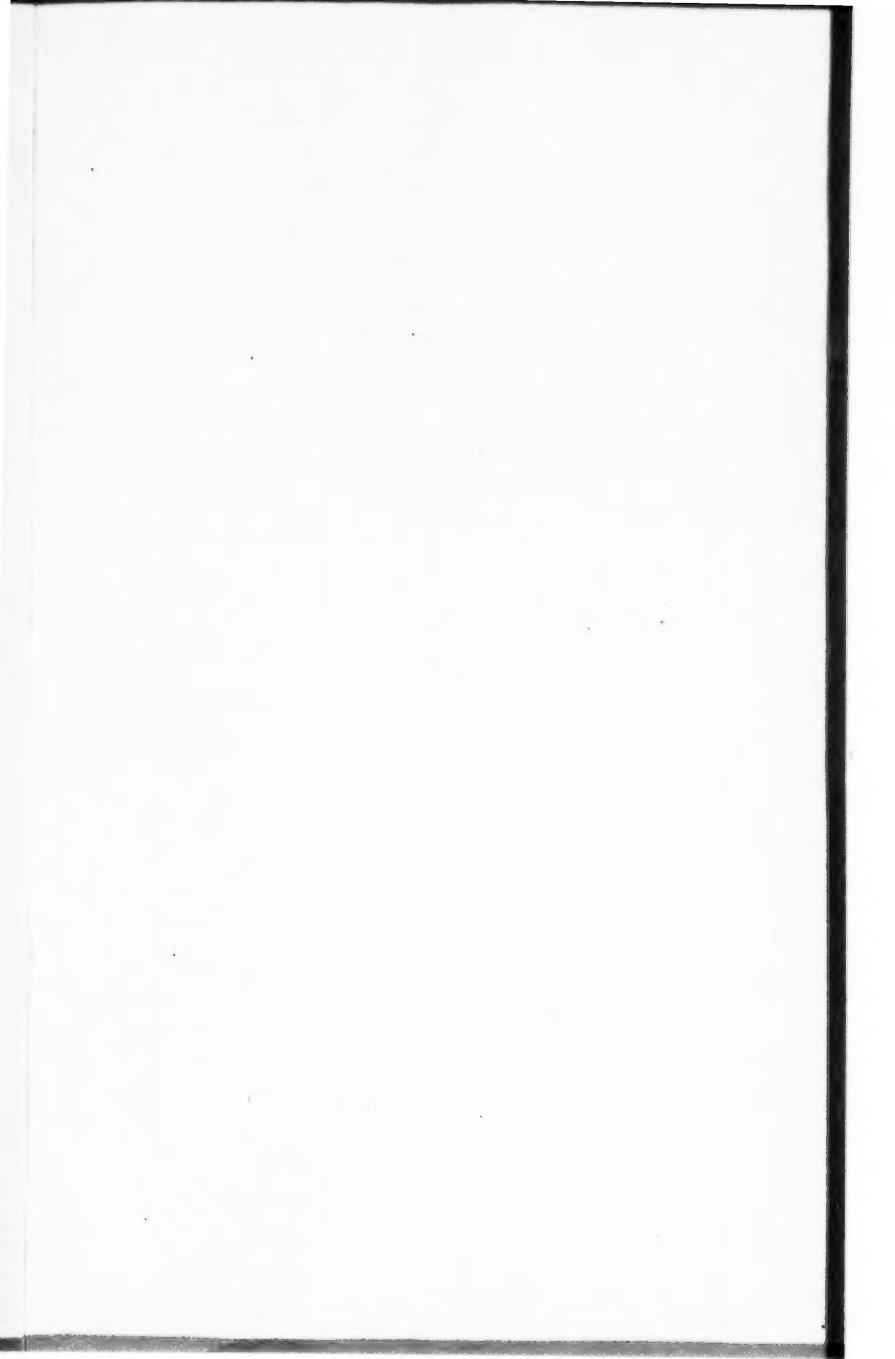


treaty Santa Anna's decree of confiscation, and to nullify all grants of land made by Sonora, that sense of fairness recognized by those of the slightest moral instinct would have required it to say so in manly terms.

The treaty contains no hint that state grants are to be regarded as invalid; on the contrary, by its silence on this subject, such grants are permitted to stand upon their own merits as to validity. Santa Anna's decree is left to be tested by his authority to make it. If valid by its own force, then grantee under state grants had no property in the lands granted to be protected by the treaty. If void, then the grantees had a property in the lands granted, notwithstanding the decree which is protected by the treaty.

I am of the opinion, therefore, that the grant in this case was valid when made; that it was not affected by Santa Anna's decree, and that the right of property originally vested under it is protected by the treaty, and I am authorized to say that Associate Justice Stone concurs with me in the opinion.

HENRY C. SLUSS,  
Associate Justice.



## Opinion of the Court.

UNITED STATES *v.* COE.

## APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 8 of October term, 1897. Petition for rehearing submitted June 29, 1898. — Denied May 22, 1899.

A petition for the rehearing of this case, which was decided May 23, 1898, and is reported 170 U. S. 681, is denied, on the ground that, after a careful reëxamination of the record, the court adheres to the judgment heretofore rendered, remaining of the opinion that from and after the adoption of the Mexican constitution of 1836, no power existed in the separate states to make such a grant as the one in this case.

THIS was a motion for leave to file a petition for a rehearing of a case decided at October term, 1897, and reported in volume 170 U. S. at page 681.

*Mr. Amos Steck* for petitioner.

*Mr. A. M. Stevenson* and *Mr. John F. Shafroth* opposing.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

After a careful reëxamination of this record we adhere to the judgment heretofore rendered, and the petition for rehearing must be denied.

In the opinion heretofore delivered, and reported 170 U. S. 681, it was stated that a grant from the state of Sonora was relied on and not a grant from the Mexican government. This was in accordance with the petition originally filed, but it appears that it had been stipulated and agreed below between counsel for the Government and the claimant that the petition should be considered as amended so as to claim title from both the nation and the state. That stipulation, however, did not appear in the record, but this was not material, as we did not regard the grant, whichever its alleged source, as a valid one, for the reasons given.

We remain of opinion that, from and after the adoption of the constitution of 1836, no power existed in the separate

## Opinion of the Court.

states to make such a grant as this. *Camou v. United States*, 171 U. S. 277, related to a grant made prior to 1836, and ruled nothing to the contrary of the decision in this case.

Construing the various applicable statutes and decrees in relation to the sale of public lands, which were in force April 12, 1838, the date of the alleged grant, together, we think it clear that the Board of Sales which assumed to act in this matter had no power to sell and convey these lands so as to vest the purchaser with title, unless the sale was approved by the general government, and that it was not so approved. Furthermore, this Board of Sales did not assume to comply with the requirements of the law in making this sale. The members of the board really professed to be officers of the State, and to act for the State, although the grant was declared to be made in the "name of the free, independent and sovereign State of Sonora as well as of the august Mexican government." But it seems to us that they referred to the nation as it existed under the Federal system of 1824, as contradistinguished from the supreme central system that was in existence in 1838. We understand that when this grant purports to have been made, the officers and people of Sonora were undertaking to carry on their government as a sovereign and independent State under the national constitution of 1824 and the laws passed thereunder, as well as the state constitution of 1825, and subsequent laws, in violation of the national constitution of 1836 and the laws promulgated under that instrument. This refusal to recognize their constitutional obligations put them in antagonism to the general government, and, although appellee's counsel deny that Sonora was in rebellion, and say that at the time of the sale she "was a conservative protestant against the dictatorial proceedings which gave rise to the central system," we cannot agree that this sale was conducted in accordance with the paramount law, and it does not appear that the national government ever ratified or approved the grant. The various constitutions and laws bearing on the subject are set out in our previous opinion, and also to a considerable extent repeated in *Faxon v. United States*, 171 U. S. 244.

*Petition denied.*